United States Court of Appeals

for the Second Circuit

APPENDIX

74-1779

United States Court of Appeals

FOR THE SECOND CIRCUIT

MICHAEL T. ANDERSON,

Plaintiff-Appellee,

—against—

GREAT LAKES DREDGE & DOCK CO.,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX

(Volume 1—Pages A1-A515)

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MICHAEL T. ANDERSON,

Plaintiff-Respondent,

-against-

GREAT LAKES DREDGE & DOCK CO.,

Defendant-Appellant.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT
OF NEW YORK

CASE NO. 71 C 2910

JUDGE COOPER

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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MICHAEL T. ANDERSON,

- vs -

GREAT LAKES DREDGE & DOCK CO.

71 Civ. 2910

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Before: HON. IRVING BEN COOPER, United States District Judge

11 February, 1974

Appearances:

For the Plaintiff: JOHN J. CORCORAN, ESQ.
By: MATTHEW L. DANAHAR, ESQ.
Of Counsel

For the Defendant: Messrs. ALEXANDER ASH SCHWARTZ & COHEN
By: JOSEPH A. COHEN, ESQ.

- o -

THE COURT: Your openings, please, gentlemen.

MR. DANAHAR: If Your Honour please.

THE COURT: Counsel.

MR. DANAHAR: Madam forelady, members of the jury, this is the phase of a trial lawsuit which is commonly known as the opening statements of the attorneys for the respective parties, and the purpose of an opening statement is to give the jurors in a general way what each party expects to prove.

I am, on behalf of the plaintiff, not going to tell you all our evidence, but I will try to outline to you generally what we expect to prove in this case.

Now, we are dealing here with a maritime matter and I am sure, I feel quite sure that perhaps one of you jurors are even familiar with the type of vessel that we are going to be talking about. We are going to be talking about a dredge. Perhaps you don't know what a dredge is. You might have seen them out in the harbour here, particularly if you travel on the ferry.

Anyway let me tell you briefly in case you don't know, a dredge is a floating vessel that they use to dig out the river bottom, to dig out channels and so on and so forth, and it's quite a large vessel.

Let me say at this point that if what I say is

not clear, I understand. It is very difficult to explain this thing to you, but we have photographs which will be put into evidence, and I am sure that with the aid of these photographs and with the aid of the testimony that you will hear you will get a much clearer picture than what I am going to outline to you now.

As I say, this is a dredge, it is a floating vessel, it is quite large and it has a big boom on it that extends out over the front of the dredge, and this boom has heavy wires running up to it and then coming down, and on the end of the wire is what they call a clamshell bucket. That's a type of bucket that opens and they drop that down into the bottom of the river, close it and naturally that picks up mud or dirt or sand, whatever, from the bottom, and that's discharged and usually in a scow.

So that's the type of vessel that we are going to be talking about, a dredge. Now, Mr. Anderson, the plaintiff in this case, was a crew member on the Dredge No. 50. That's the number of the dredge, and it was owned and operated by Great Lakes Dredge & Dock Company. That is the company that we are suing.

This accident dates back to October 18th, 1970, which was a Sunday, and on that day there was aboard the dredge -- incidentally, the dredge on that day was working

out here in the Hudson River right up around Pier 80 of the Hudson River, which I think is about forty something street, and it was out in the river. But at this particular day, Sunday, it was what is known as a repair day. They weren't actually doing any dredging work that day, but there was a crew aboard the dredge and they were doing repairs on the dredge.

Now, Mr. Anderson was one of the crew members. He was a deck hand. In addition to Mr. Anderson there was the captain of the dredge, there was a mate, what they call a mate, there was an operator -- incidentally, the operator is the man who manipulates the controls that make this bucket go up and down on the boom, and then there were two deck hands and one engineer. That was the complete crew aboard the vessel on that day, which is in these cases, or in these dredges, a full complement.

Now, the captain, the men reported for work at seven-thirty in the morning, that's the usual time, and the captain laid out the work. One of the jobs that he designated to be done was to change the wire on this boom. This is a big heavy wire about an inch and a half in diameter, and he gave the order. What he wanted done was to reverse the wire.

In other words, he wanted to have the wire taken

off the end that was attached to the bucket, take that end and bring it back up through the boom and down into what is known as the cab, and that's where the revolving drum works and which lifts this bucket up, or lets it down. That's where the mechanism is that this wire goes around, in the cab.

As I say, the purpose was to take the end off the drum in the cab, bring it down to the deck, attach it to the bucket and take the end that was on the bucket and bring that back up through the boom and down into the cab again.

Now, as I say, perhaps this isn't clear to you, but the photographs might be more clear. Now, in connection with this procedure of changing the wire from end to end, there was involved in that the operator, and there was the mate, and there was Mr. Anderson and, as I mentioned before, there was another deck hand who was Bruce Anderson who is, incidentally, Mr. Anderson's brother. Then you had the engineer.

The engineer, ordinarily his work is confined to, just as his name implies, with the engine part of the vessel. But all these other men, part of their duties is to engage in this very job that was being done. But on this particular day after they had succeeded in taking the wire

off the drum up in the cab and bringing it back down to the deck and then when it became time to bring this wire back up and back to the drum, the captain took one of the men off the job. He took Bruce Anderson, Mr. Anderson's brother, off that particular job, and sent him some other place to do some painting. So that left only three men to complete the operation.

Now here comes the complicated part in getting a true picture to you, and here again the photos will help. In order to get this wire back up through the boom and down into the cab, the wire is attached to what is known as a tugger, t-u-g-g-e-r winch.

Now, this is a small winch and it is located in the cab, and when the wire is being taken off that drum -- well, let me define what a winch is. A winch is a mechanical device for -- where you have a wire attached to it and its purpose is to wind something up. Something like the big drum. It's to pull something with, or lift something with. But it is a much smaller piece of mechanism and the wire on it is only a half inch thick.

Well, in any event when it came time to bring this wire up from the deck the wire from the tugger winch was attached to the wire down here on deck, actually it had been attached in the cab and had been brought down

with the big wire, and there it was on deck, and it became -- now was the moment to bring this heavy wire back up through the boom into the cab.

Now, this cab is an enclosed cab, if you can picture it. It has, as you look forward where this tug -- let's assume this is the tugger winch right here (indicating), only it's down low. As you face the tugger winch you have a wall in front of you and there is no way of looking out on deck to see what's going on. Absolutely no way.

Over on the left hand side of this cab there's a door which is approximately from about here over to the end of the top part of the jury box here (indicating). But there is nothing here by which a man who is operating the tugger winch can look out to see what's going on.

Now, Mr. Anderson was the one who was up in the cab operating this tugger winch. Now, you have the control for the winch, or a lever, it's on the right side of the tugger winch, and it was his job to operate this control and in doing so when he would put it in the hoist position that would start pulling up this big heavy wire up the boom and back into the cab. And this wire that the winch is pulling up, that is the tugger winch wire now as distinguished from the main wire that's being pulled

up, this tugger winch wire is being pulled in this way into the winch and going around the drum of the winch (indicating).

Now, ordinarily in this job you have a man who handles the control of the winch, you have another man who watches and guides this tugger wire around the drum so that it winds around the drum evenly. If you don't get that wire to wind around the drum evenly it can pile up on top of each other and it can damage the wire.

So that the object is to make sure that you wind it around even. Just like with a fishing rod, you know, the spool of a fishing rod, it's important that that be wound around evenly. It's more important when you are dealing with wire cables.

At any rate, ordinarly you have one man operating the lever, controlling the lever, you have another man guiding this cable to the drum and then over at the door you have what is known as a signal man. And of course his job is to look out on deck and see what's going on, making sure that everything is proceeding smoothly and if something should happen the signal is given to this man and then he passes right on to the operating winch and shuts the winch off, or slows it down, or whatever is called for.

Now, on the occasion of this accident, that is what we are dealing with, an accident to MR. Anderson, he is the only one up in this cab all by himself. He is operating the tugger winch, the lever, he has got this wire to be concerned about, to guide it on to the drum and he has no signal man over there to give him any signals as to what is going on on deck whether he should stop this winch, whether he should slow it up or reverse it or what.

So, consequently he has on his mind the job of three different men, and while he is doing this -- incidentally, in order to -- so that he could run over to that door and see what was going on out on deck, ordinarily he should stand to the right of this wire, because it passes on the left around the drum and the lever control is here (Indicating). But, so that he could run over to that door and see what was going on he stood to the left of the wire so the wire was passing this way and his lever control was over here (indicating).

So he had his right hand on the lever, the wire is passing by him this way (indicating) and he is tapping it with his left hand to guid it around the drum, and while he is doing that he had gloves on, which is normally to be expected, he is supposed to wear gloves in this operation, his hand got caught in something on this wire

that was moving and it was pulled into the drum of this tugger winch, and he was tossed over the drum, and that is how he sustained his injuries.

Now, that briefly is what this case is all about from the plaintiff's standpoint. Of course our claim is that there was insufficient help in doing the job, and we also claim that there must have been a defect of some kind in this wire to catch his glove on, and basically that what the case is about.

As I say, this is not the time to go into all of the details. We have some other claims, but those are the main points.

Now, what happened to Mr. Anderson as a result of this accident? Well, he was twenty years old at the time. He is now twenty-three. He sustained a fracture of the left humerus ,that is the upper arm here (indicating) and he also sustained damage to the radial nerve and he was taken to French Polyclinic Hospital immediately. They gave him emergency treatment, and the same day he was transferred to Doctor's Hospital in Staten Island, and he was in the Doctor's Hospital from October 18th, 1970 until November 18th, 1970.

Now, while at the hospital they did an operation on his arm. They had to put a plate in the arm, and be-

cause of this nerve damage to the arm when he was discharged on November 18th, he had to wear a brace because he had what was known as a wrist-drop. The doctors will explain to you what that is. He can't control the wrist. You can't move it up and down. He had a wrist drop and he had to wear a brace.

Well, he was out of work for approximately nine months, during which time he was wearing this wrist brace. Eventually he did return to work in the capacity of a handyman.

Perhaps at this point I ought to bring this out. At the time of the accident Mr. Anderson was working as a deck hand, but he had the classification of mate. In other words, despite his youth he had started working, incidentally, in 1967, he had not completed high school and he was just in his second year of high school when he left and started working on the waterfront as a dredge man. And he did so well, he started off as a handyman and a deck man, that within three years he had the classification of mate. And he did work as a mate when other mates went on vacation.

He was not a steady mate. And of course the rate of pay between a deck hand and a mate and an operator varies, each one is a higher level and they make more money consequently.

consequently. But, we expect to prove that within a short period of time Mr. Anderson would have reached the stage of being a steady mate, and certainly by this time if not before this time he would have reached the classification of an operator, which is one of the highest paying jobs on the bridge outside of the captain.

So, as I say, getting back to the injury, he had this brace on his arm, apparently the condition was not improving, so in 1952, May of -- 1972, excuse me, some doctor in January of 1972, had recommended that something be done about this situation. So, he went over to the Marine Hospital in Staten Island, and he was admitted there as an in-patient, and they did an operation on his arm to help straighten out this problem of the wrist drop.

They did a pretty good job in the operation. They transferred different muscles and tendons and whatnot, and they overcame that problem of the wrist drop. But, unfortunately, and we will prove this, we will have the medical records fro all these hospitals, the Marine Hospital, he has been an out-patient at the Marine Hospital ever since then.

By that I don't mean he goes there every day or every week. He goes there periodically and they

examine him to see if this condition is improving, and he has been to the Marine Hospital as recently as January 30th of this year, which was the last time he was there, and at that time they called in a special consultant, an orthopedic consultant, to examine him to find out, well, what is this boy's status as far as recovering from this condition and from these injuries.

This consultant examined him and he found that he has a permanent limited use of his left arm, and that is his present status now. And it is our position that because of this condition of his arm he will never be able to become a steady mate, he will never be able to become an operator, and consequently he has lost a substantial amount of money in wages right up to the present time, and that he will lose a substantial amount of money into the future because of his inability to advance himself due to this injury.

That briefly is what we expect to prove in this case.

Thank you.

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THE COURT: Mr. Cohen.

MR. COHEN: Thank you, your Honor. May it please the Court.

THE COURT: Counsel.

MR. COHEN: Madam Forelady, Ladies and Gentlemen of the Jury, during the course of the proceedings this morning a very able and articulate judge told you that when you served in this courtroom you are, and I quote, "ministers of justice." I would like you to ponder on the meaning of that term, because to me a minister of justice means that you have to administer justice, and this really means that you have got to dispense justice.

In order to dispense justice you may be called upon to do something that your head tells you should be done, but that your heart and your sympathies may prefer not to do. But, nonetheless, that is the oath you took, that is the task you have, and that is what we are going to ask you to do in this case.

In order for anyone to do the just thing in my judgment they have to understand what the issues are. They have to understand as much as is humanly possible to understand about what is going on. Especially in this kind of a lawsuit.

We are not here dealing with the kind of lawsuit

that you may have had some experience with, such as an automobile accident where some of you drive cars, you are all certainly pedestrians, you see, you hear, you understand. We are here dealing with an accident that happened on board a dredge. I doubt that any one of you have ever been on a dredge. I doubt that you have, as you sit here now, I doubt if you have the foggiest notion what a dredge looks like, its parts, or what goes on.

But you have got to decide this case justly and, therefore, it is our job to make you understand as best we can as to what was going on. If we do our job well, nothing else happens, you will understand an awful lot more about dredges and the gear and equipment as a result of this lawsuit than you do now.

I agree with Mr. Danahar, this is a very difficult type of situation to describe to you orally with words, but photographs have been taken of the dredge, of the parts involved, and if I may, your Honor, have a set of photographs that were taken, and if I may to make it clearer to the jury at this point, because I will offer them in evidence in any event, may I just use two or three to demonstrate what I am talking about in my openings?

THE COURT: I see no objection. Do you, Mr. Danahar?

MR. DANAHAR: May I see the photographs, your Honor?

THE COURT: Surely. He will put them into evidence, he said.

MR. DANAHAR: I have no objection, your Honor.

THE COURT: All right. Would you be good enough, Mr. Clerk, to mark those for identification?

Let the record show that they were marked.

MR. COHEN: Thank you, your Honor.

THE COURT: Just for accuracy sake.

xx (Defendant's Exhibits A, A-1 and A-2 marked for identification.)

MR. COHEN: Let me show you first this photograph, Exhibit A marked for identification, and I will work my way along.

This is a photograph taken of the very dredge involved, the Dredge No. 50, it was taken at a subsequent date. But this will give you an idea of what the dredge looks like (handing).

It is in effect a floating crane with a clam bucket that has a housing attachment in the back.

Let me just show this to each of you so that you may get some idea of what I am about to discuss (handing).

It is a floating crane. Here is the boom,

or the crane, or the derrick, and this is the bucket that is sent down into the bottom of the river, and it scoops up, it's a clam bucket, and it scoops up the much and the mud, then it is raised up and it is put over a scow alongside, such as you see here (indicating). That is another floating object. It is empty. And it is released, and all the muck goes into the scow, and the scow would ultimately dump it somewhere when it is filled up.

This is the clam bucket that is sent down to the bottom, this is the crane on which it is suspended (indicating).

This is really a floating crane. Cranes I think you are a little familiar with, because you have seen cranes in the street. This is a floating crane with a clam bucket.

Now, this is in fine detail, and the light here is not that good, but this crane is suspended by two thick cables. They came down here (indicating).

This clam bucket rather is suspended by two thick cables that run from the cab of the crane.

I apologize for the fact we don't have real live blow-ups. There are these two wires here running from the cab, and I will explain to you where they connect up at the other end in a moment.

They run through a shiv, or a block at the top of the derrick, and then come down and they are attached to the clam bucket.

Now, there are two separate wires that run down there because each one serves a separate and distinct purpose. One of those wires, and you can see it here, is connected over here to the clam bucket itself, and that is the wire, the wire cable that holds that clam bucket, and if you want to move the clam bucket up or down the operator inside the cab operates a winch drum and that will activate that wire, either taking the wire in on the drum or letting the wire out on the drum. It will cause that wire to go up and down, and as that wire goes up and down obviously the clam bucket goes up and down with it.

That wire, because it holds the clam bucket, and this is very important, you are going to hear a lot of jargon, every business and every trade has its own jargon, and unless you start to understand what the jargon means you are going to be lost when you are talking to people, so that is why I am going into this in detail now. It is important for you before you hear a single witness to understand some of the jargon so that you can translate it into simple terms in your own mind to understand what we are talking about.

That wire, because it holds the clam bucket, is called the holder wire. Okay? The holder wire, because it holds the clam bucket. And it is the one to use when you want to raise or load the clam bucket.

Now, the clam bucket, as you know from having, I imagine, having seen some on the street, has a mouth that opens and closes on the bottom so it can scoop and hold and then let go. And there is a separate wire to operate that opening and closing of the clam bucket's jaws.

That is the second wire you see here, and that, because it controls the opening and closing of the jaws, it doesn't keep the claim bucket in its up or down position, this is just used to control the opening of the jaws. So, because it's used to control the opening and closing of the jaws, that second wire is called the closer wire. Okay?

The closer wire is the thick cable that is attached to the clam bucket that operates the jaws, and the holder wire is the other thick one that is attached to the clam bucket so that it can be raised and lowered.

Now, those two thick cables are fairly similar. They are thick. Mr. Danahar said they might be about an inch and a half, approximately that, and they are thick and they are heavy and periodically as a matter of good maintenance -- let me withdraw that for the moment.

mp. 20

Let me tell you where those wires go on the other end before I explain the maintenance.

Those wires run through the cab, through an opening in the upper part of this cab (indicating). You can see them going down here, and they are wound on to a very large drum, a winch drum, a very large winch drum. That is large enough to accommodate heavy cables such as these wires are.

For good maintenance is necessary every now and then to reverse the wires, each of those wires, end for end. The end of each of those wires that is on the clam bucket is the end that gets the most wear. The other end is just wound around the winch drum and it will be let out and taken in.

So, every so often, for good maintenance, the company would have the wires changed end for end so that the end of the wire which had been on the clam bucket is reversed so that it is now placed on the drum of the winch, and the end which was on the drum of the winch is reversed so that you have it placed on the clam bucket.

This is done from time to time with both the holder and the closer wires. There is a little discrepancy, I am not really sure of the answer in this case, as to whether what was being done at this time was to reverse the holder

wire or the closer wire. But I don't think it makes any real difference which wire they were involved with because the wires were essentially the same and the operation for reversing either one of them is essentially the same.

MR. DANAHAR: I do agree to that, your Honor.

THE COURT: You do agree?

MR. DANAHAR: Yes, I agree to that.

THE COURT: Thank you.

MR. COHEN: Now, how do they go about reversing either the holder or the closer wire? This thick heavy cable? The bucket is put down somewhere, usually on a scow that is alongside of the dredge, and with the bucket at rest. The wire to be reversed is disconnected from the bucket. It is usually a shackle or some kind of securing device that the men can take off.

So now you have one end of that wire is off the bucket and it's free. Now, the other end of that wire, the wire still runs through the top of the derrick down into the cab and around the drum of the winch that services it. They have to get all of that wire on to the scow so they can reverse the end of it.

So that with one end free of the clam bucket, the operator then sits in the cab, and I think you can see the silhouette of a man sitting in the cab here (indicating),

and that is where the operator sits, and he has present in that cab over there the controls that enable him to turn the winch drum that is holding the wire that is to be reversed so as to pay that wire out, let it go out, and the wire is being paid out.

There are men who are on the scow. These are some of the dredge's men. They are standing on the scow, and there is the operator who is letting the wire come out, and flaking it about on the deck of the scow. They want to get all of that wire down so they can reverse the ends.

Now, when they reach the point in the operation where that wire is nearly completely off the drum of that big winch that's inside, and I will show you some pictures of this in a little bit, when they reach that point they have to stop for a moment and they have to in some way usually take another bite, or securing purchase on that wire so that it doesn't run away from them when they finally disconnect it from the drum.

So they will do that generally on the deck. They will connect a line from that wire so that it is going to be held, and then in this other photograph, Exhibit A-1 for identification, you see this large drum over here and this large drum over here is the drum of the winch that services that holder, or closer wire, and it's quite large.

mp 23

I have a better shot of it, if I may.

May I just have this one marked also, your Honor?

THE COURT: All right, you may mark it, Mr. Clerk.

Mr. Cohen, I think that I must suggest that if you are going to rely heavily on some of these exhibits you will have to have them enlarged so that when you address yourself to the exhibit you will not have to repeat a different verse to different parts of the jury what the photograph has to depict. You will be able to use a pointer and they can see what you are talking about. In fact, I might even suggest that there ought to be a model, if it is too late for a model, then for heaven's sake be sure we at least enlargements of the photographs, those photographs in particular to which you are going to make frequent reference.

We cannot wait until each group of the jury takes a look at these 8 x 10s, or whatever they are. Do you understand?

MR. COHEN: Yes, I do, your Honor. Might I ask this: these were a set of photographs that Mr. Danahar gave to me. If I could ask him for the negatives I could try to get them blown up properly.

THE COURT: You gentlemen know that I recognize

your obligations and you have plenty of responsibility, but among yourselves figure out something, bring it in to aid the jury.

MR. COHEN: All right, your Honor.

Here is a better picture of the ones that we have shown the large winch drum that services the closer, or the holder wires, and you can see there is a wire of that type that is coming in from up above which is the hole in the cabin running around this winch drum.

Now, the point I want to make is that when the end of that wire is nearly off the drum it has to be unshackled. In other words, when the drum has rotated most of the way and most of the wire is off, you find the end of that wire is secured to the drum in some fashion, and that has to be unsecured.

Now, they do unsecure it, they remove the shackle with a securing device, and the idea then is still, the end of that wire still has to travel up from the cab through the block, or shiv in the derrick, or down on to the scow. They have got to get that upper end down so they can reverse the ends.

Do you understand that? In order, and this is where we really get involved with what happened in this case, they don't want to have that wire completely loose

lying on the scow because then when you reverse it the question is how do you get it back up through that block or shiv at the head of the derrick?

So what they do is they utilize a tugger winch, which has on it a tugger cable. This is a much smaller winch and winch drum and it's shown in this photograph, Exhibit A-1. It's this round drum over here (indicating), and this cable running from it is the cable that belongs on it, and because the only purpose this has in life is to assist in the changing operation of the large holder, or closer cable. That's all it's used for, and it's used to tug it. So they call this a tugger winch.

Now, why it is use to tug it I will explain in just a moment. This is the tugger winch, you see it's relationship to the large winch drum that holds the large cable, this is the small cable, the tugger cable wire that's around the small tugger winch.

Now, they will attach the end of the closer wire to the tugger winch wire and then let the cable run all the way out to the head of the derrick and down on to the scow. Then all they have got to do is to disconnect the tugger wire from the holder wire and reconnect it to the opposite end of the holder wire so that when they then take in on the tugger wire, tug in on the tugger wire, the tugger wire

is still running through the head of the derrick, it comes rising up to the head of the derrick and that is now secured to the holder cable, or closer cable, whatever it is. It brings with it as it comes up the other end, and it brings that other end back down into the cab, and once that end is back down into the cab it can then be removed from the tugger wire and resecured to the drum of its own winch and wound in on its own winch drum. That's really all they want to accomplish.

That is the operation. You have got a number of different terms involved. We are talking about holder wires, closer wires, tugger winch wires, the important thing for this case as I understand it is this tugger winch and the wire on the tugger winch, because that is what Mr. Anderson says he was working with at the time the accident happened.

Now, I wasn't present when this accident happened, and neither was Mr. Danahar. All that I really know about this case is not evidence, what Mr. Danahar knows and tells you is not evidence. The evidence must come to you from people who take the stand and who were present that can you what happened and what they saw.

We are permitted to talk to you in advance so that you can sort of appreciate in advance why certain

questions will be asked, why the lawyers at least think they are important. Because, as Judge Cooper has also said to you earlier, the proof comes in a little bit like a mosaic. There is a little piece here and there. It is not until all of it is in that you see the entire picture.

So we try to give you some preliminary idea as to what you may expect. Sometimes we are right, and sometimes we are wrong, and you have got to judge whether the witnesses have established what any of the lawyers have said.

Now, on the day this accident happened they had gotten to the point in the operation where the, I will call it the heavy cable because again I am not sure if it was the holder wire or the closer wire that was being reversed, whatever it is it is a heavy cable, they had gotten to the point where that heavy cable had all been put out. It had been down on the scow. They had reversed the end through the tugger winch wire and they were now in the process of starting to bring in the tugger winch, to hold it in so as to bring in that heavy cable back down to the cab so they could disconnect it from the tugger winch and put it on its own winch drum.

At that time Mr.Anderson was operating the tugger winch, and a better picture of the actual tugger winch is

shown in Exhibit A-2 marked for identification, and here it is (indicating). It is a stationary object. It is permanently affixed,or bolted to the floor. It doesn't move, it doesn't jump out at you,it doesn't do anything like that. It is just a drum, a drum that when youpull this lever over here in one direction or another, the drum will move, it will rotate either in one direction or another.

Depending upon the direction in which it rotates it either lets the wire that is on it come out, or it pulls it in. That's all it is. It occupies itself, it occupies the same space, it doesn't move around. It's just that the drum rotates.

This drum is a relatively small affair certainly compared to the other winch drums that hold the heavy cable. It measures about 10 inches according to the measurements on these photographs. It measures about 10 inches from one side to the other. And near that, about 13 inches away, is the lever that the operator is supposed to work with to make it go in one direction or another.

Now, at the time this accident happened Mr. Anderson had the job of working this tugger winch cable, and all he really had to do was to keep it in motion, to keep the tugger winch wire coming back onto the drum

because as that keeps coming back onto the drum remember, it's a heavy cable, it is bringing that heavy cable up from the scow up through the head of the cable back to the cab.

Now, there were other men on the scow watching out for the heavy cable to see that it didn't snag or get caught in anything. That wasn't his job. His job was to operate this winch. It takes a man to operate it.

While he was operating this winch, and according to his testimony -- you may be surprised that I used the word "testimony" because you haven't heard any yet. Under the rules in the Federal Court each side is permitted to take testimony from the other side in advance of trial so that we each have an idea of what the testimony will be on the trial. They have done it to us, we have done it to them.

Mr. Anderson has given his testimony just two months ago, and it was testimony taken under oath. He was there and he was the only one in the cab at the time. The only one in the cab at the time this accident happened, and he was working this little tugger winch.

He testified that he had taken in about three turns on the tugger winch wire, so you can see that that was relatively early in the operation of bringing the cable

back in. Three turns had come in, and he was operating the winch, and suddenly he says he felt pain.

You will see that under oath two months ago in the presence of his lawyer he swore that he doesn't know what happened. You will see that two months ago --

MR. DANAHAR: Your Honor, I don't think it is proper opening. This is going into argument and summation.

THE COURT: It is a position taken that counsel says he will maintain by the evidence, therefore the objection is overruled. I will not allow counsel to elaborate too much. You make reference.

What you are saying is that in the examination, that is what you say, it remains for the jury to decide whether you are correct, you say that in an examination before trial this plaintiff said he doesn't know what happened at the time of the accident.

MR. COHEN: Absolutely.

THE COURT: All right. Now go to something else.

MR. COHEN: Yes, sir. But, if I may, he further said that there was nothing wrong with the wire on the tugger winch, and that there was nothing wrong with the winch.

So we come to you in this situation, we come

to you with the situation of a man who was working with the machine, a tugger winch that we owned and supplied to them, that's certainly our equipment, and while working alone with that machine, unwitnessed by anyone, he had an accident. And when he is questioned he says there was nothing wrong --

THE COURT: Well, that is argumentative. The objection is sustained. I am afraid I will have to strike out the argument.

Next. The jury will disregard the last statement. Now go ahead, Mr. Cohen.

MR. COHEN: In sum, and to cut it short, all we say to you is that based upon his own testimony, which we shall read to you, we will show you that from his own mouth he was the only witness present. There was nothing wrong with the equipment that was supplied to him.

We will show to you that based upon his own testimony this accident happened only because of his own carelessness.

That's pretty much it in a nutshell. I hope that by showing you these pictures and giving you some idea of what is involved I have not confused you, because believe me, my intention is not to. It is imperative to us that you really understand every aspect of this operation.

During the course of this trial I will endeavor to get witnesses who talk in jargon to make it as simple for you as possible, because it all can be made simpler so that you do understand, because I think when you understand what is going on, when you understand this claim you will find that contrary to the claims made, contrary to those claims, my client was not negligent and did not cause this accident.

Thank you.

THE COURT: Very well. Mr. Danahar, will you call your first witness.

MR. DANAHAR: Yes, sir. I will call Mr. Michael Anderson.

M I C H A E L T. A N D E R S O N, the plaintiff, called as a witness in his own behalf, being first duly sworn, testified as follows:

THE COURT: Mr. Anderson, I say this to all witnesses. You must speak up in a clear voice. The jury must hear what you have to say, and will you please remember you are in a courtroom and what you say here is different from what you would say in your house, for instance, where you would be allowed to speak as softly as you wish.

In a courtroom you can only answer the question that is put to you. If you are asked when were you born,

don't give the names of your parents, and don't give the place where you were born. You just give the date of your birth.

That's it. Do you understand that?

THE WITNESS: Yes, sir.

THE COURT: All right, go ahead, Mr. Danahar.

DIRECT EXAMINATION

BY MR. DANAHAR:

Q When were you born, Mr. Anderson?

A May 6, 1950.

Q What education have you had? Just briefly.

A Two years of high school.

Q Did you finish your second --

A No, I didn't finish my second year.

Q When was it that you left school? What year?

A '67.

Q After finishing school did you go to work?

A Yes, sir.

Q Who did you go to work for?

A Great Lakes Dredge & Dock.

Q That is the defendant in this case that you are suing; is that correct?

A Yes, sir.

Q When you started work for that company what was

your job? What was your title?

A I was a sandbagger.

Q A sandbagger?

A Yes, sir.

Q What work did that involve, sandbagging?

A Putting sand in bags and throw them into a mud scow to keep them from leaking.

Q How long did you hold down that job?

A About a week.

Q What did you do after that?

A I went to work for Great Lakes again in May as a deckhand.

Q When did you start with Great Lakes?

A April 12, 1967.

Q Then after this sandbag job you were laid off for a while and you went back again in May; is that it?

A That's right.

Q In what kind of a job?

A Deckhand on a spud barge.

Q On a spud barge. What is a spud barge?

A It's a barge with three spuds in it.

Q Can you tell the Court and jury what spuds are?

A Spuds are square blocks that hold the barge in one place in the water.

MR. DANAHAR: Your Honor, may I have excluded from the courtroom any prospective witnesses?

THE COURT: Certainly. Any witnesses.

MR. COHEN: If your Honor please, I believe that is limited to fact witnesses. I have an expert maritime consultant here whom I would like to sit with me to assist me during the course of this trial.

THE COURT: That is allowed. But if he is going to -- is he going to be a witness?

MR. COHEN: I expect him to testify, but he was not a witness to any of the facts.

THE COURT: All right, it will be brought out to the jury that he has been in the courtroom throughout, you understand, Mr. Danahar. He is an expert and, therefore, he ought to listen to what is being contended so that he may address himself to those points at the time of his testimony. That goes for both sides. Is that agreeable?

MR. DANAHAR: Well, I would still like to press my objection, your Honor. The mere fact that he is an expert, I don't think that entitles him to sit in the courtroom.

THE COURT: Mr. Cohen, what do you say?

MR. COHEN: If your Honor pleases, he is not a witness to any of the facts. I relied on him, I consulted

with him frequently during this trial. It is Captain William Wheeler who sits there, and I need to consult with him, and I never heard where an expert was excluded.

THE COURT: I am going to allow him to stay.

BY MR. DANAHAR:

Q Mr. Anderson, you were telling us that you were working on this spud barge in May.

A Yes, sir.

Q How long did you work on that barge?

A A couple of months.

Q Was that for Great Lakes?

A Yes, sir.

Q Then what did you do?

A I went to work for Gates as a deckhand.

Q Gates? Is that a --

A Gates Construction Company.

Q Construction Company?

A It's dredging, also.

Q What kind of a job did you have with them?

A I was a deckhand with them.

Q How long did you work for Gates?

A Five months.

Q Then what did you do?

A I went to work for Weeks.

Q Is that a dredging company?

A Yes, sir.

Q How long did you work for them?

A Well, a couple of weeks or a month. I'm not too sure.

Q Then what was your next job?

A I went back with Great Lakes.

Q When was that, approximately?

A '68. June.

Q June of 1968. Did you continue working for Great Lakes from June of 1968 up until the time you had your accident?

A Yes, sir.

Q When you were back with Great Lakes in June of 1968 what kind of a job did you get?

A Deckhand.

Q Did you eventually become a mate?

A Yes, sir.

Q When did you become a mate?

A About October of '69.

Q Is a mate's job a higher job, a higher-paying job than a deckhand's job?

A Yes, sir.

Q Did you work as a mate?

A Yes, sir.

Q Were you a steady mate or part-time mate?

A Part-time.

Q When did you work as a mate?

A When operators or another mate would go on vacation they would move me up into a mate position and move a mate up into an operator.

THE COURT: All right now, will you pause long enough, Mr. Anderson, to tell us what was the nature of your work as a mate? For instance, there was an occasion when a mate went on vacation and you took his place; now, what would you do?

THE WITNESS: I would be in charge of the deck.

THE COURT: What does that mean? You see, we don't operate a dredge. Now, what would you do?

THE WITNESS: You run the levers for the scows, move it back and forth. You set up the machine at different locations, and you do most of the --

THE COURT: Do you tell the men what to do in connection with it?

THE WITNESS: Yes, sir.

BY MR. DANAHAR:

Q Do you supervise the men?

A Yes, sir.

Q When you worked as a mate did you ever have occasion to be involved in the work that you were involved in at the time of this accident?

A Yes, sir.

Q In your capacity as mate how many men were used by you up in the cab when it came time to use this tugger winch and pull this heavy cable back up into the cab?

A Three.

MR. COHEN: If your Honor please, may we be more specific and fix some dates to this?

THE COURT: Yes. Fix the dates, please, Mr. Danahar.

Q Do you remember any specific dates when this was done?

THE COURT: Or establish that it was infrequent or frequent. I don't know.

MR. DANAHAR: Well, my question, your Honor, was when he worked as a mate on any occasions did he have --

THE COURT: Yes, but that is too uncertain.

MR. DANAHAR: All right.

Q Do you remember what particular year, for instance, when you were working as a mate this very job that was being done at the time of your accident was done while you were the mate?

A November of '69, I was mate in '70. As for what month I can't recall.

THE COURT: Let me ask you this, if you don't mind, Mr. Danahar --

MR. DANAHAR: No, your Honor.

THE COURT: -- you were doing a particular job at the time of your accident, were you not?

THE WITNESS: Yes, sir.

THE COURT: Tell the jury what particular job you claim you were doing at the time of your accident. What do you call it?

THE WITNESS: I was a deckhand.

THE COURT: All right. But while you were doing that particular job, what do you call that particular job that you were doing?

THE WITNESS: Changing the closing cable.

THE COURT: Changing the closing cable?

THE WITNESS: Yes, sir.

THE COURT: Right. Now, how many times have you done that sort of job? Just exactly that kind of changing --

THE WITNESS: The cable.

THE COURT: -- the cable.

THE WITNESS: Many times, your Honor.

THE COURT: You say "many."

THE WITNESS: I'd say over a hundred.

THE COURT: Over a hundred?

THE WITNESS: Yes,sir.

THE COURT: All right.

BY MR. DANAHAR:

Q When you were involved in this job of changing the cable over a hundred times, how many men did they have up in the cab at the time it became necessary to operate this tugger winch to bring that heavycable back up into the cab?

A Three.

THE COURT: Wait, please. You understand I am talking about the exact kind of job you were doing at the time of your accident. I don't want any job that was a little different, I want the exact job.

Are you saying that you did that exact type of job over a hundred times?

THE WITNESS: Yes. Changing that wire, that closing wire, yes. I'd say that many times. Yes, sir.

THE COURT: Under the same circumstances?

THE WITNESS: By circumstances do you mean in the same locale?

THE COURT: Not only in the same locale, but with the same objective, the same --

THE WITNESS: Idea of changing --

THE COURT: Yes.

THE WITNESS: Yes, sir. Whenever you change that wire that was the idea. Or we were putting on a new wire, we would do it the same way.

THE COURT: And every single time you had three men?

THE WITNESS: I'd say yes.

THE COURT: In the cab?

THE WITNESS: Yes. When I did it.

THE COURT: Was there any particular reason why on this particular date of October 18, 1970, you were the only man?

THE WITNESS: I was not in charge.

THE COURT: What?

THE WITNESS: I was not in charge.

THE COURT: You were not in charge?

THE WITNESS: Yes, sir.

THE COURT: All right.

BY MR. DANAHAR:

Q The testimony that you have given is that when you were mate you always had three men; is that what you are saying?

A No, not only when I was mate. When other men on the machine was doing the job. If you want I could give

names.

Q No. In other words, what you are saying, when other mates were in charge they also used three men?

A Yes, sir.

Q What did these three men do in the cab?

A One man was on the tugger, one would guide the wire, one would stand by the door watching the wire come up the boom and watch the wire on the deck,or coming through the shiv.

Q And the one man that was --

THE COURT: Now, wait. You see, you first admit that the jury comes to this without the slightest conception of what is involved, and then he makes a summation in a very restricted fashion. He is not supposed to be a speechmaker. That is not his line of work. He sums it up. It is no good. You will have to just have him break it down step by step as to what he maintains he does in order to have the jury understand what his position is. It may be a little difficult, but you have got to do it.

MR. DANAHAR: All right, your Honor.

THE COURT: They are the ones that have to understand it.

MR. DANAHAR: Your Honor, at this time I offer

in evidence Defendant's Exhibit A-2 marked for identification.

THE COURT: Is there any objection?

MR. COHEN: Not at all.

THE COURT: Received.

MR. COHEN: May we mark them all in evidence?

THE COURT: Please, Mr. Cohen. That is where trouble starts. He knows his business like you know yours. All he is offering in evidence is Exhibit A-2. Mark it in evidence, Mr. Clerk.

xx (Defendant's Exhibit A-2 received in evidence.)

THE COURT: Ladies and gentlemen, one word on that. I don't like to keep you in the dark about things of this nature. When a paper, or any inanimate object is marked for identification you cannot see it in detail. You can look at it, glance at it sometimes. As when Mr. Cohen showed it to you in his opening remarks. But, when a document, or anything is received in evidence, as this photograph was just received, then you may examine it to your hearts' content.

It is as much a partof the trial as the testimony of the witness. So that the trial is not just the witness's testimony, it is the exhibits, it is the agreement between

counsel, it is the comments by the Judge. All of that is a part of the trial, not just the oral testimony.

Is that clear? All right.

BY MR. DANAHAR:

Q Mr. Anderson, you said there were three men up there and one on the job was to operate the tugger?

A Yes, sir.

Q Would you look at Defendant's Exhibit A-2 and point out what is the tugger (handing)? The tugger winch.

THE COURT: The tugger winch.

A The tugger winch is this winch right here (indicating).

THE COURT: Now, you take the pen the clerk has just handed you, looking it over carefully before you make a mark on it, be sure what you are doing. Now, go ahead and mark it. Mark it with an X where you say the tugger winch is.

MR. DANAHAR: Your Honor, may I suggest the letters TW?

THE COURT: All right, TW. Accepted. TW. All right, there it is. What else do you want him to do?

Q Now, you mentioned something about one man operating the tugger winch. How would he operate it?

A With the little lever.

Q All right, would you indicate on the exhibit where the lever is located, and if I may suggest, your Honor, we will use the letter L for lever.

THE COURT: I certainly cannot disagree with you.

A Okay.

Q Now, you mentioned something that there was another man up there who would guide the wire?

A Yes, sir.

Q Now, the wire that you are referring to is what?

A The tugger wire.

Q Would you indicate on the exhibit the tugger wire?

MR. DANAHAR: Now, we can't use letters there, your Honor, because TW for tugger wire would be the same as --

THE COURT: All right. Put the number 2 in front of the letters TW. All right. Now I think you had better let the jury look at that before you start to add anything more. There are too many things for them to keep in mind. Let them take a look at it.

MR. DANAHAR: May I ask one more question, your Honor?

THE COURT: Yes.

Q The tugger wire that you have just indicated just

now, that is the wire that one of these men was to guide around the tugger winch; is that correct?

A Yes, sir.

THE COURT: All right. Now, take your time, ladies and gentlemen, show it to the forelady and each one of you look at it with care and then we will proceed. Take your time. You must study these things.

I have told you before, ladies and gentlemen, I have respect for these attorneys. One of them has an important engagement that he asked me to recognize, and I have recognized it, and he will have to leave in a few minutes. So that we will be calling it a day in just a few minutes.

Have you anything in those few minutes, Mr. Danahar, that must be pressed?

MR. DANAHAR: No, I think I could use them up very usefully by just putting this photograph in evidence, your Honor.

THE COURT: All right.

MR. DANAHAR: May I offer in evidence this photograph, your Honor?

THE COURT: Show it to Mr. Cohen.

MR. COHEN: Perfectly all right, your Honor. No objection.

THE COURT: All right, it is received in evidence.

xx (Plaintiff's Exhibit 1 received in evidence.)

THE COURT: Thank you.

Now, ladies and gentlemen, you remember what I told you about not talking about this case and the evidence. It will not come as a surprise to you that I have never broken an appointment. When I was growing up if you were not on time you were told to go to the bookkeeper and get your check, and I wonder whether that was not a superior system to the one that we have especially recently where you come and go and all that sort of thing.

At any rate, when I say you be here, be here, because I will be here. I am in chambers usually an hour or two before I come down to the courtroom, but I want you here and ready to proceed tomorrow at 10 o'clock. We may sit as late as 5. It all depends. I have other engagements. This case, our best guess is that the testimony will be in by the close of Wednesday. That does not mean that it is not an important case. It means that the lawyers have done their work and are ready to put in the essence of their evidence that they have gathered.

Usually this is like a surgical operation. The patient has been treated for months with medication, deep

therapy. The day of surgery has arrived. That is only a couple of hours, relatively speaking. It is extremely important, but the fact that it only takes two or three days does not make it less important. If it took two or three months it would be the samething under our law.

Counsel will do their best, I will do my best, so that we will not extend it beyond that indicated period, and if we go into something that requires more time, that is the way it is going to be. If we have to sit in an evening, that is the way the Judge will have to do it according to his conscience.

You are going home now, you have got a break. This may be the only break you will be getting in the case.

All right, good night, ladies and gentlemen.

(Adjourned to February 12, 1974, at 10.00 A.M.)

MICHAEL T. ANDERSON
vs. 71 Civ. 2910
GREAT LAKES DREDGE & DOCK CO.

New York, February 12, 1974;
10.05 A.M.

Trial resumed.)

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(In the presence of the jury.)

M I C H A E L J. A N D E R S O N, resumed.

THE COURT: Good morning, ladies and gentlemen of the jury. We are sorry to keep you waiting for a few minutes, but we had a conference on a certain phase of this matter.

Mr. Anderson, do you understand that you are continuing with your testimony under oath without the necessity of being resworn?

THE WITNESS: Yes.

THE COURT: Very well, Mr. Danahar, would you please continue.

MR. DANAHAR: Thank you.

Mr. Cohen, may I have the photographs which you had marked for identification, please.

If your Honor please, I offer Plaintiff's Exhibits A, A-1, A-2 -- excuse me, your Honor, it should

be Defendant's Exhibit A, A-1, A-2 and A-3 in evidence.

THECOURT: No objection, Mr. Cohen?

MR. COHEN: No. A-2 has already been marked in evidence. It's just the others that have to be marked.

THE COURT: Very well. Mark them in evidence, please.

They have already been looked at by the jury. Very well, they are now in evidence.

(Defendant's Exhibit A for identification marked Plaintiff's Exhibit 2-B in evidence.)

(Defendant's Exhibit A-1 for identification marked Plaintiff's Exhibit 2 in evidence.)

MR. DANAHAR: May I proceed, your Honor?

THE COURT: Please do.

Would you keep your voice up, Mr. Danahar. The acoustics here are bad.

DIRECT EXAMINATION CONTINUED

BY MR. DANAHAR:

Q Mr. Anderson, referring to Plaintiff's Exhibit 1 which is in evidence, does that photograph show the tugger winch?

THE COURT: Yes or no? Does it show it?

THE WITNESS: Yes, sir.

THE COURT: Next question.

Q Would you mark it, please.

THE COURT: How do you want it marked?

MR. DANAHAR: TV.

THE COURT: Give him a piece of paper, please. Think about it before you put any marks on it. Mark it TV.

Q Where is this tugger winch located on the dredge?

A In the cab.

Q What part of the cab is it, the forward end of the cab, the after end?

A The forward end.

Q This photograph, which is Plaintiff's Exhibit 1, as you look at the photograph, in which direction are you looking, towards the port side of the dredge or the starboard side?

A The port side.

Q Now, which is the port side of the dredge?

A The lefthand side.

Q The lefthand side as you were looking forward; is that correct?

A Yes.

MR. COHEN: Your Honor, just excuse me. May I just match up my copy to that so I can follow this, your Honor?

Thank you very much.

Q At the forward end of the cab where the tugger winch is located, is there any doorleading into the cab itself?

A Yes, sir.

Q Is there one door or more than one door at the forward end?

A On the forward end there is one door.

Q Where is that located?

A On the port side right in the front.

Q Is that door shown in this photograph?

THE COURT: Exhibit what?

MR. DANAHAR: Exhibit 1.

A Yes, sir.

Q Would you mark it, please.

MR. DANAHAR: Your Honor, I suggest with the letter D.

Q Now, in order to look forward out on deck of the dredge, how do you look out from the cab?

THE COURT: When you were in the cab, how would you look out?

A Out the port door.

THE COURT: Out the port door?

THE WITNESS: Yes, sir.

THE COURT: Which you just marked D?

THE WITNESS: Yes, sir, in the front.

Q Is there any other way of looking through out of the cab at the forward end other than looking through that door?

A No, sir.

Excuse me for a minute. At the time.

Q I am just restricting my questions to the time of your accident.

A Yes.

Q Was there any other way of looking out the forward end of the cab except through that door?

A No.

THE COURT: Would you excuse me just a minute.

(Pause.)

THE COURT: All right, Mr. Danahar. I'm sorry.

MR. DANAHAR: Your Honor, I realize that in Mr. Cohen's opening statement he referred to these photographs and, of course, pointed out the various partsof the dredge and so on, but, of course, that isn't in evidence, so I am going to have to go through that now.

THE COURT: That is perfectly all right. He was giving them a general picture so that they would understand and thatb extremely important.

If it has to be repeated, it has to be repeated. We have doctors taking the stand before us involving -- their testimony involves the most intricate type of testimony and if they are real teachers, they will break it down to A, B, C, and the jury gets it. Otherwise the jury will not get it and the Judge won't get it. That's your job, to make it very simple.

MR. DANAHAR: All right.

Q Now, Mr. Anderson, referring to Plaintiff's Exhibit B, does that show a general view of the dredge No. 50?

A Yes, sir.

THE COURT: Mr. Danahar, may I just say, when you operate like that, these people can't hear you. They are straining. You have got your back to most of the jurors. If you will just leave the photograph with him -- you know what's on it backwards and forwards -- and you can ask him questions and then you can step back to the lectern and everybody can hear what you are saying.

MR. DANAHAR: All right, your Honor. Perhaps if I stood over here, would it be all right?

THE COURT: You may do whatever you want, but please raise your voice.

Q Mr. Anderson, would you indicate on that

If it has to be repeated, it has to be repeated. We have doctors taking the stand before us involving -- their testimony involves the most intricate type of testimony and if they are real teachers, they will break it down to A, B, C, and the jury gets it. Otherwise the jury will not get it and the Judge won't get it. That's your job, to make it very simple.

MR. DANAHAR: All right.

Q Now, Mr. Anderson, referring to Plaintiff's Exhibit B, does that show a general view of the dredge No. 50?

A Yes, sir.

THE COURT: Mr. Danahar, may I just say, when you operate like that, these people can't hear you. They are straining. You have got your back to most of the jurors. If you will just leave the photograph with him -- you know what's on it backwards and forwards -- and you can ask him questions and then you can step back to the lectern and everybody can hear what you are saying.

MR. DANAHAR: All right, your Honor. Perhaps if I stood over here, would it be all right?

THE COURT: You may do whatever you want, but please raise your voice.

Q Mr. Anderson, would you indicate on that

exhibit the forward end of the dredge? The forward end is the front end, isn't it?

A The bow.

Q That's the front end?

A Yes.

Q Would you indicate the front end of the dredge on there by putting a letter on there, F?

A F?

Q Forward, or put B, bow.

Now would you indicate the boom on the dredge? What letter are you using?

A B.

MR. DANAHAR: May I suggest B-1, your Honor?

THE COURT: Yes.

Q Does that photograph show a clam shell bucket?

A Yes, sir.

Q Would you indicate that with the letter C.

Now, would you indicate on the photograph the cab of the dredge by the letters C-a-b?

Now, as you look at that photograph, what side of the dredge is shown, the port or the starboard side?

A The port side.

Q Along the port side of the dredge, is there another vessel there?

A Yes, sir.

Q What is that vessel?

A A scow.

Q Would you indicate that by the letter S.

Now, at the time of your accident, you were in the process, or the men were in the process of reversing the closing cable; is that correct?

A Yes, sir.

Q Would you indicate on that photograph the closing cable?

Draw an arrow to it.

THE COURT: CC. Put two Cs there, Closing Cable.

Q Where does that closing cable run from and to what?

A It runs from a drum in the cab to the bucket.

Q Where does it come out of the cab?

A Where?

Q What part of the cab does it come out?

A The front.

Q Does it come out of the top of the cab?

A The top.

Q Where does it run to?

A Up to an A-frame and out to the boom and down to the bucket.

Q It runs up to the top of the boom?

A Yes, sir.

Q Then it goes down --

A To the bucket.

Q To the bucket, and it's attached to the bucket?

A Yes, sir.

Q Is there also a holding cable?

A Yes, sir.

Q Would you indicate on the photograph the holding cable?

May I suggest the letters HC.

Where does that cable run from and to?

A The holding cable runs from the cab -- a drum in the cab, up the boom to the bucket.

Q So these two cables run generally in the same direction --

A Yes.

Q Up and down?

A Yes.

THE COURT: By the two cables you mean?

MR. DANAHAR: The closing cable and the holding cable.

THE COURT: Is that right?

THE WITNESS: Yes, sir.

THE COURT: Now, if I may suggest, if you are through with the marking on that exhibit, take time and give it to the jury. Let the jury take a look at it and study it and then we will go on.

MR. DANAHAR: Fine, thank you.

THE COURT: That's No. 1, is it not, in evidence?

MR. DANAHAR: It's No. 2-B, your Honor.

THE WITNESS: When I marked the front, Iput it on top and just put like an arrow.

THE COURT: Let's look at that.

What are you saying?

THE WITNESS: On the front here he asked me where the bow of the dredge was, so I put it up here to indicate it was this whole front of the picture.

THE COURT: Okay. So, the F that you put up there refers to the front of the picture; is that what you are trying to say to us?

THE WITNESS: Yes.

THE COURT: The jury will bear that in mind.

Mr. Clerk, would you hand it to the forelady, and may I suggest that the jury look at it two at a time. Take your time, though, and study it because you must understand it.

(Exhibit handed to jury.)

THE COURT: All right, Mr. Danahar.

MR. DANAHAR: Your Hoor, I offer this photograph in evidence.

MR. COHEN: No objection.

THE COURT: No objection. Mark it in evidence, Mr. Clerk, please.

xx (Plaintiff's Exhibit 2-C received in evidence.)

BY MR. DANAHAR:

Q Mr. Anderson, does this photograph -- may I lead the witness, your Honor.

THE COURT: Show the witness the photograph.

Q What does Plaintiff's Exhibit 2-C show?

A The boom.

Q That's the boom that is shown in Defendant's Exhibit 2-B; is that right?

A Yes, sir.

Q Would you write out the word "Boom".

Is the closing cable and the holding cable shown on that photograph?

A Yes, sir.

Q Would you mark each one, please.

If you can identify it, mark the closing cable

CC and the holding cable HC.

MR. DANAHAR: May I just hold this up to the jury, your Honor?

THE COURT: Yes. You will have to just show it to them in sections because it's small. Let themtake their time to look at it.

I think you better hand it to them. Hand it to them. That's the only thing to do.

MR. DANAHAR: All right.

THE COURT: It's not fair to just hold it up like that. They can't get it that way.

(Exhibit handed to jury.)

BY MR. DANAHAR:

Q Mr. Anderson, referring to Plaintiff's Exhibit 2, is the closing cable drum that's located in the cab shown in that photograph?

A Yes, sir.

Q Would you mark it, please, by CCD?

MR. DANAHAR: If your Honor please, closing cable drum.

Q Is the closing cable itself shown in that photograph?

A Yes, sir.

Q Would you mark it CC, please.

Now, in which direction is that closing cable going, up towards the roof of the cab --

A Yes, sir.

Q And out of the cab?

A Yes, sir.

Q The tugger winch is also shown on the photograph?

A Yes, sir.

Q Is the tugger winch directly forward of the closing cab or drum?

A Yes, sir.

Q How far apart are they? Approximately.

A Three feet.

Q Now, this photograph, Defendant's Exhibit 2, as you look at it, in which direction are you looking in the cab, the port side or the starboard side?

A Looking at that one?

Q Yes.

A Looking towards the starboard.

Q Which is the righthand side of the dredge?

A May I see that?

Q Yes.

A Yes. You are looking to the starboard.

Q And the starboard side is the righthand side of the dredge?

A Right, sir.

MR. COHEN: May I just see the markings made?

THE COURT: Surely. I think they ought to be shown to the jury, too, Mr. Danahar.

MR. DANAHAR: Yes.

MR. COHEN: May I just pass it?

THE COURT: Please do.

MR. DANAHAR: Your Honor, I have two more photographs to offer in evidence.

MR. COHEN: No objection.

THE COURT: Mark them in evidence, please, Mr. Clerk.

xx (Plaintiff's Exhibits 2-D and 2-F received in evidence.)

MR. DANAHAR: Does your Honor wish to look at any of these photographs?

THE COURT: I do, after you are through with them. If you are through with them, I would like to see them. I mean, through for the time being.

MR.DANAHAR: Yes, I am, for the time being.

THE COURT: Yes.

Thank you, Mr. Danahar.

MR. DANAHAR: May I proceed, your Honor?

THE COURT: Please do.

BY MR. DANAHAR:

Q Referring to Plaintiff's Exhibit 2-F, Mr. Anderson, does that show the tugger winch and the closing wire drum?

A Yes, sir.

Q Would you mark the tugger winchwith TW and the closing wire drum with CCD?

Referring to Plaintiff's Exhibit 2-D, does that show a part of the tugger winch and part of the closing wire drum?

A Yes, sir.

Q Would you please mark with TW the tugger winch and with CCD the closing wire drum.

MR. DANAHAR: Your Honor, may I show these two to the jury?

THE COURT: Certainly, Mr. Danahar.

For the sake of the record, recite the numbers again of what you are showing to the jury.

MR. DANAHAR: I am showing to the jury Exhibits 2-D and 2-F.

(Exhibits handed to the jury.)

MR. DANAHAR: May I proceed, your Honor?

THECOURT: Yes.

Q Mr. Anderson, on October 18, 1970, you were

employed by Great Lakes Dredge & Dock Company; is that correct?

A Yes, sir.

Q You have been employed by them for the most part since 1967; is that correct?

A Yes,sir.

Q You had started out as a sandbagger?

THE COURT: We got all of that yesterday. You went into that in very great detail.

MR. DANAHAR: All right.

Q Now, on October 18, 1970, you were working on the Dredge No. 50; is that correct?

A Yes, sir.

Q Which is a dredge owned and operated by the Great Lakes Dredge; is that correct?

A Yes.

Q Where was the dredge at the time?

A Pier 80 in New York City.

Q Is Pier 80 on the Hudson River?

A Yes, sir.

Q And what time did you report for work that day?

A 7.30.

Q Who else reported for work on that day?

A Art Ramos, Eddie Ducey, Bruce Anderson, Norman

Hebert. I believe that's it.

Q What about the captain, was he there?

A The captain was there.

Q What was the captain's name?

A George De Graff.

Q What was the rating of Ramos?

A Ramos was the mate.

Q Bruce Anderson was your brother; is that correct?

A Yes, sir.

Q He was a deckhand?

A Yes, sir.

Q And you were a deckhand?

a Yes, sir.

Q There was an engineer on the dredge named Hebert, wasn't there?

A Yes, sir.

Q There was an operator on the dredge named Ducey; is that correct?

A Yes.

Q Is that the normal complement of the crew of this dredge; is that the usual crew you have on this dredge?

THE COURT: The usual gang?

A At that time, yes, sir.

Q Now, when you wentaboard the dredge, were you

assigned certain work to do on that day?

A Yes, sir.

Q Was this a Sunday?

A Yes, sir.

Q Was the dredge operating that day; that is, was it digging?

A No, sir.

Q What was to be done on that day?

A It was a repair watch.

Q By watch you mean it was a day scheduled for the crew to be aboard to make repairs on the vessel; is that right?

A Yes, sir.

Q Who assigned the work to be done on that day?

A Captain De Graff.

Q Who did he assign it to? Who did he specifically give the orders to?

A Art Ramos and Eddie Ducey.

Q What work was assigned for that day?

A Changing the wires.

Q What wires?

A The closing wire.

Q You said changing. What do you mean by changing the wire?

A We begun to turn it end for end.

Q Would you tell the Court and jury what that means, turning it end for end, and describe what is done?

A Taking the end off the bucket --

THE COURT: Slowly, now. Take your time.

Take the end off the bucket?

A Take the cable off the bucket and reverse it back to the drum in the cab and in the cab -- the end in the cab you hook up to the bucket.

Q Which end do you take off first?

THE COURT: I'm sure, if I may interrupt, Mr. Cohen will not object to a leading question on that particular point, but that's all. In other words, what job was to be done that day.

MR.DANAHAR: Thank you, your Honor.

Q On this particular day the job that was to be done was to take this closing cable and take the end that was attached to the drum in the cab --

A Yes, sir.

Q -- to take that end off and run it up through the boom, down to the deck where it would be attached to the bucket; is that correct?

A Yes, sir.

Q Did the end of this closing cable wire that had

been attched to the bucket, that was to be brought back up through the boom and down into the cab and attached to this big drum in the cab which is known as the closing wire drum; is that correct?

A Yes, sir.

Q So the first thing that was done was to take the endof the wire that was attached off the drum in the cab --

MR. COHEN: This I object to. May we have the witness describe what was done first?

THE COURT: Yes. On this part you will have to have the witness do the talking.

MR. DANAHAR: All right.

Q Will you start from the beginning and tell us what was the first thingthat was done in connection with this procedure.

A You take the wire -- you unhook the wire from the bucket. The bucket is on a scow and you take all the wire off the drum until you get to the end.

Q Now, which drum are you talking about?

A The closing drum. Then you hook up the smaller wire to the closing wire.

MR. DANAHAR: May I interrupt, your Honor, just for clarification at times?

THE COURT: Surely.

Q When you hook up the smaller wire, are you referring to the tugger wire?

A Yes, sir.

THE COURT: Keep on giving me names. You see, everytime you mention a wire, tell us which wire, will you --

THE WITNESS: Yes.

THE COURT: Even though you keep repeating it. Will you do that, please?

THE WITNESS: Yes, sir.

Q Sir, when you take the closing wire off the drum in the cab, you hook that on to the end of the tugger wire; is that correct?

A Yes, sir.

Q Then what occurs?

A After you hook up the tugger wire to the closing wire, you finish pulling the closing wire down on to the deck.

Q When you pull the closing wire down on to the deck, the tugger wire is coming along with it down to the deck; isn't that so?

A Yes, sir.

Q All right.

A Then when you get the tugger wire and the closing wire down on deck, you disconnect the tugger wire from one end of the closing wire and hook it up to the end you had on the bucket and then you proceed to wind the tugger wire back up on to the tugger wire drum until you get the closing wire back to the drum and then you hook it up and that finishes the job.

Q In other words, the tugger winch and wire is used to pull the closing wire cable back up through the boom and down into the cab where the closing wire cable will now be reattached to the closing wire drum; is that correct?

A Yes, sir.

Q How many people were involved in this job of taking the closing wire off the main drum, or the drum in the cab, down to the deck?

A Four.

THE COURT: Give their names, will you?

Q Who were they?

A Ed Ducey, Art Ramos, myself and Bruce Anderson.

Q After the closing wire had been brought down to the deck and there had been a reversing of the wire, there came a time, now, that you had to bring the wire back up through the boom; is that correct?

A Yes, sir.

Q What was your job at this point?

A To run the tugger wire -- tugger winch.

THE COURT: To what?

THE WITNESS: To run the tugger --

THE COURT: Winch?

THE WITNESS: Winch, yes, sir.

THE COURT: Not winch, winch.

THE WITNESS: Yes, sir.

Q By the way, what is the dimension of the tugger wire?

A Half-inch.

Q What is the dimension of the closing wire?

A Inch and a half.

Q Who assigns you to do this job of running the tugger winch? If you remember.

A I can't remember who it was.

Q Well, in any event, you then went up into the cab to operate the tugger winch; is that correct?

A Yes, sir.

Q Was there anybody else delegated or assigned to go up into the cab with you to assist you in the operation in the cab?

A No.

Q Now, normally when it comes time to bring this cable back up through the boom and down into the tugger wire, how many men are assigned up in the cab to perform that operation?

A Three.

THE COURT: What do they do? What does each one do? Explain it to us slowly.

THE WITNESS: One man runs the tugger winch, one man guides the wire and one man would stand by the port forward door to watch and make sure that the wire came up to the boom all right and was coming on deck with no trouble.

THE COURT: Okay.

Q Now, the man who was operating the winch, the tugger winch, can he see out on deck?

A No, sir.

Q The man who was standing by the door, can he see out on deck?

A Yes, sir.

Q What is his job, the man who was standing by the door?

A He is the signal man. He would tell you to go -- to either slow the machine down or to stop it or to wind it up.

Q You mentioned a third man.

Oh, you have given that.

Now, what werethe lighting conditions in the cab on this particular day, October 18?

A There is one light. There is a light on the front of the cab and that's the only one that I can recall right now.

THE COURT: Would you know what the voltage was?

THE WITNESS: 100-watt, I believe.

THE COURT: And there was no other lighting?

THE WITNESS: In that certain area, not to my recollection.

THE COURT: All right.

Q What was your brother, Bruce Anderson, delegated to do at the point where it became time to bring this cable back up, the closing cable?

A I believe he was told to go clean under the spud wires deck so he could paint it.

Q So, he had nothing to do with the operation involving the bringing of the cable back up; is that correct?

A Yes, sir.

Q But he had been helping with the job in taking it down?

A Yes, sir.

Q You went up into the cab and you went over to the tugger winch; is that correct?

A Yes, sir.

Q What did you do?

THE COURT: Now, there is the question. Take your time and tell us every step that you recall.

A The tugger wire is straight across.

THE COURT: Take your time. The tugger wire is what?

THE WITNESS: Straight across the closing drum.

THE COURT: Yes.

A (Continuing) I reached over the tugger wire with my right hand to start the winch. I started the winch. I tapped the wire over until I get it straight. Once you get it straight you use the pinch bar to guide, but in the meantime you just tap it with this guide until you get a straight row and I am running it and I believe I had about three turns and my hand got caught.

THE COURT: It got caught where?

THE WITNESS: On the wire.

THE COURT: On what wire?

THE WITNESS: On the tugger wire.

THE COURT: Yes.

THE WITNESS: I was pulled towards the drum.

Q When you say the drum --

A Towards the tugger.

THE COURT: Wait a minute. Take it easy. You have no model here, have you?

MR. DANAHAR: No, but we have a photograph.

THE COURT: Mr. Clerk, let's have the jurybox. Do you get what I am trying to do?

THE WITNESS: No. Not really.

THE COURT: That will help you demonstrate it.

THE WITNESS: May I stand up?

THE COURT: Sure.

Now, make believe this is --

MR. DANAHAR: It isn't that high, your Honor.

THE COURT: I know. I don't care about that. This is just for the general idea.

Is this the drum?

THE WITNESS: Yes, sir.

THE COURT: Make believe this is the drum that you referred to.

THE WITNESS: Okay.

THE COURT: What drum is that?

THE WITNESS: The tugger.

THE COURT: You have a wire that's going around that tugger drum; is that right?

THE WITNESS: Yes.

THE COURT: You want to have it nice and even?

THE WITNESS: Yes, sir.

THE COURT: Now, you go ahead and show us with your own movement how you were working that day on that occasion when your hand got caught. You just go through the motions.

THE WITNESS: The lever is on this side and the wire runs across about knee-high. I am tapping it to keep it straight and my hand got caught on the wire.

Q Would you go through the motions.

THE WITNESS: I am standing here and my hand got caught on the wire and it pulled myself to the wire and after that I just got up and --

THE COURT: Go slowly. You are not doing what I wanted you to do. I want you to demonstrate to these people the motions that you went through. Get over here, please.

THE WITNESS: Yes, sir.

THE COURT: I don't know why I should have to do all this, but in the interests of justice -- is there a charge for the use of this?

THE CLERK: No, your Honor.

THE WITNESS: Okay.

THE COURT: Go through the motions. Make believe that this is the drum; right?

THE WITNESS: Yes, sir.

THE COURT: You have got your wire. How do you hold the wire?

You have got something there? Do you have a piece of string?

THE WITNESS: You do not hold the wire.

THE COURT: Show us. I don't know it.

Here, here's the wire.

THE WITNESS: Okay. I am running it from over here and I am tapping it like this and I had gloves on. My hand got caught --

THE COURT: Show us the motions before your hand got caught. You are handling the wire, right?

THE WITNESS: Right.

THE COURT: Where were you putting the wire?

THE WITNESS: On to --

THE COURT: Go ahead and do it.

THE WITNESS: I was doing it like that. It was coming from here like that (indicating).

THE COURT: Right. Now we are getting somewhere.

THE WITNESS: Now, you want to keep it on an

even row, so you tap it to keep it even, so I am tapping it and my hand got caught.

THE COURT: Go through the motions. Show us.

THE WITNESS: My hand got caught and I was pulled.

THE COURT: All right. Now, he demonstrated it by taking the wire and his hand moved forward to the drum. The jury saw the demonstration. Go through that again. Here is the wire.

THE WITNESS: All right. Here is my hand and my hand got caught and I was pulled with the wire --

THE COURT: How did your hand get caught?

THE WITNESS: I believe it was a fish hook on the wire.

THE COURT: A fish hook?

THE WITNESS: Yes, a piece of wire that broke off.

THE COURT: And your hand got caught on that?

THE WITNESS: Yes, sir.

THE COURT: And it pulled it right in; is that what you mean?

THE WITNESS: Yes, sir.

THE COURT: Do you get it?

Now, you are not allowed to ask any questions.

I can ask the questions.

Do you understand what he is doing?

Now I will take any suggestions from the jury as to what you would like to have him demonstrate in connection with this endeavor.

Are there any questions?

JUROR NO. 7: I would like to see him demonstrate the speed with which his hand went toward the drum.

THE COURT: Can he do that? Can you demonstrate the speed with which your hand went forward to the drum when it got caught on the fish hook?

THE WITNESS: Quite fast.

THE COURT: Show us. Demonstrate it, for heaven's sake.

THE WITNESS: My hand got caught and that was it.

JUROR NO. 4: After his hand got caught, how did the drum stop? I think that will be helpful.

THE COURT: How about that?

THE WITNESS: I believe my hand went off the lever.

THE COURT: You don't know one way or the other?

THE WITNESS: No.

THE COURT: If you don't know, say so.

THE WITNESS: I don't know.

JUROR NO. 5: His right hand was over the lever?

THE WITNESS: Yes, sir.

JUROR NO. 5: That's what I would wish, if you would do that.

THE WITNESS: My hand is over here and I am tapping with the wire to keep it straight and I went forward and when I went forward I imagine my hand went off the lever or pulled it into reverse and that's how I got my arm out and I stood up and my arm was stringing like a chicken without no head. I will putit that way.

THE COURT: How about the forelady, any questions on this demonstration?

THE FORELADY: No.

THE COURT: Anybody else?

I know you have my undivided gratitude for my participation in your demonstration.

MR. DANAHAR: Thank you, your Honor.

THE COURT: I think we will take a short recess, counsellor.

Announce a short recess.

THE CLERK: All rise, The Court will take a short recess.

(Recess.)

(Jury present.)

THE COURT: All right, go ahead.

MR. DANAHAR: Momentarily may I stand here?

THE COURT: Certainly.

Ladies and gentlemen, I might as well tell you this. I have had a little talk with both lawyers and both of them are agreed that this demonstration is pretty much the essence of the claim. However, it's plaintiff's contention -- you understand that he contends that this job that this man was doing on that day required more than one man for that particular endeavor. The claim is there should have been a man at the winch. The claim is that it takes another man to operate the wire, to see that it's even. That's the claim and that's where you come in. Does it take one; does it take more; did it take more; more would have been required; yes; no? That's a very important point. I thought I would interrupt long enough to tell you that that, in essence, in a rough way points up your problem.

All right.

MR. DANAHAR: Your Honor, there was one other element I think you left out.

THE COURT: He couldn't see outside.

MR. DANAHAR: Yes, and where the other man should be, too.

THE COURT: That you are going to develop.

MR. DANAHAR: Yes.

THE COURT: I wasn't giving the detail as to where each man should be. I was just trying to say to the jury that the contention of the plaintiff is that the work that he was doing which he demonstrated to this jury, that very job required more than one person to do. You understand that? Isn't that the contention? Am I still wrong?

MR. DANAHAR: No. You are not wrong.

THE COURT: I am not giving them a bill of particulars. I am saying when he got up there and did that demonstration, it looked as though only one man would be required to do it, and all I am pointing out to the jury is that while it was simple for him to make the demonstration, the contention of the plaintiff is that what this witness demonstrated required more than one man to accomplish.

MR. DANAHAR: Safely.

THE COURT: Certainly. That's always.

BY MR. DANAHAR:

Q Mr. Anderson, referring to Plaintiff's Exhibit 1 in evidence, you have marked on this exhibit the tugger winch and the door on the lefthand side of the cab; is

that correct?

A Yes, sir.

Q Would you mark on this exhibit --

MR. DANAHAR: Excuse me, your Honor, may I withdraw that question?

THE COURT: Yes.

Q You have also testified that normally in this operation when it comes time to bring this wire back up into the cab, there are three men assigned to the job; is that correct?

A Yes.

Q Now, will you indicate on Plaintiff's Exhibit 1 -- first of all, tell us what those three men would do up in the cab.

A One man would run the tugger.

Q By running the tugger, you mean he would have his hand on the lever?

A Right. One man would run the tugger, the lever; one man would guide the wire on to the drum and one man would stand by the door to check the wire come up the boom and the wire running over on the deck.

THE COURT: All right, it takes a little time, but we will do it.

Mr. Clerk, would you put the drum back again,

will you?

Here is the same electric cord. Demonstrate what one would do and what the other would do.

THE WITNESS: The lever would be over here. One man would be on this side running the lever.

THE COURT: Explain the lever. What does the lever require; what is it?

THE WITNESS: A lever is a piece -- it is a control. It is a control where a man would stand there and run that lever forward or in reverse.

THE COURT: All right, backwards and forwards?

THE WITNESS: Yes, sir.

THE COURT: Depending upon what?

THE WITNESS: On what way he wanted the drum to turn.

THE COURT: All right.

THE WITNESS: That man would stand over here. Then a man would stand on the opposite side guiding the wire and then there would be a man by the door watching the wire come up the boom and watching the wire on the deck making sure everything is all right down there.

THE COURT: All right. You demonstrate what the man would do who was guiding the wire.

THE WITNESS: The wire would be here. In the

beginning he would just like guide it to get an even row.

THE COURT: All right.

THE WITNESS: Then it would become very tight, so he wouldn't be able to do it, so he would get a pinch bar. He would put a pinch bar somewhere on the deck and guide it. The wire would be pulling towards one side all the time, so the man would have to, you know, use a pinch bar to guide it.

THE COURT: All right. So what you are saying is that the man who operates the wire that you have been talking about to see that it's even on the drum has nothing to do with the lever?

THE WITNESS: Nothing whatsoever.

THE COURT: Is that what you are saying?

THE WITNESS: Yes, sir.

THE COURT: The man who operates the lever has nothing at all to do with the wire going on the drum and arranging it in a neat fashion; is that what you are saying?

THE WITNESS: Yes, sir.

THE COURT: Then you say on top of that there is another man at the door so he at the door can give instructions to the man operating the lever?

THE WITNESS: Right.

THE COURT: Is that what you mean?

THE WITNESS: Yes, sir.

THE COURT: Let's go.

THE WITNESS: May I go further?

THE COURT: No.

Next question. Sit down.

BY MR. DANAHAR:

Q While this operation is going on of rewinding the wire, is there noise in the cab?

A Yes, sir.

Q What causes that noise?

A There is a caterpillar in the cab -- an engine that is running and that would cause a great deal of noise.

Q On the day of this accident there was no man over at the door on the lefthand side of the cab to take signals from anybody on deck; is that right?

A Yes, sir.

Q So how would you get a signal in case it became necessary for you to either stop or start this tugger winch?

MR. COHEN: Objection. There is no testimony that any signals would be relayed.

THE COURT: Objection sustained. It is argumentative.

Q What is the purpose of the man who stands by the

door when you have these three men working?

A To listen to the man on deck -- to listen to the man on deck because the wire is running from either the stern or from the scow and the man standing by the door could not see the whole operation. There is another man on the deck watching the wire also and he would tell the guy standing by the door.

THE COURT: Who in turn would tell the man --

THE WITNESS: The man standing by the lever facing him.

Q On the day of your accident, how were you to receive signals?

A They would holler up to me.

THE COURT: What?

THE WITNESS: Holler.

Q Holler?

A Yes.

Q Yell?

A Yes, sir.

Q They would yell up to you; is that the plan?

A Yes, sir.

Q At that same time there was noise in the engine room from this caterpillar -- or, rather, in the cab from this caterpillar that you mentioned?

A Yes.

Q Now, referring to Plaintiff's Exhibit 1, when you had three men up in the cab, would you indicate where the man who would be controlling the lever would stand?

A Yes.

THE COURT: Let him have the drum again. I'm sorry, Mr. Clerk, but he just indicated that he would like to have the drum.

THE WITNESS: No.

MR. DANAHAR: No, the pencil, your Honor, to mark the photograph.

THE COURT: I'm sorry.

Q Indicate where the man who was controlling the lever would stand.

THE COURT: Just put an arrow there. That's where he would stand?

THE WITNESS: Right.

Q Would you indicate on the photograph where the man guiding the wire on to the drum, the tugger winch drum, would stand?

A How would you want me to indicate it?

THE COURT: I would put W. That's where he would stand?

THE WITNESS: Yes.

Q Would you indicate on the photograph where the man would stand who was to receive signals from the deck?

A What letter?

THE COURT: What do you call that fellow; what kind of job does he have?

THE WITNESS: Signal man.

THE COURT: Put SM, signal man. That's where he would stand. That's what you are supposed to mark.

Is there anything else?

Please show it to the jury. Please show it to them, Mr. Clerk, or Mr. Danahar. Please let the jury see these things before you load them up with a lot of detail.

(Exhibit handed to jury.)

THE COURT: All right, Mr. Danahar.

MR. COHEN: May I take a look at that?

THE COURT: Certainly, Mr. Cohen.

MR. DANAHAR: Would your Honor care to look at it?

THE COURT: Yes, please. Thank you.

Okay. Thank you, Mr. Clerk.

Next question.

Q Mr. Anderson, at the time your hand got caught on the wire, how far, approximately, was your hand away from the tugger winch drum?

A About two feet.

Q Now, again referring to Plaintiff's Exhibit 1, at the time of your accident, would you tell us where you were standing?

A Yes, sir.

THE COURT: Now, that you would mark with an X. Where you were standing on the day of the accident, just at the time your accident happened, mark that with an X.

Q Were you standing to the right of the tugger wire or the left of the tugger wire as it was coming in?

A The wire was going in front of me. I would be on the lefthand side.

THE COURT: The lefthand side of what?

THE WITNESS: The tugger control.

Q No. My question was, were you standing to the left or the right of the tugger wire. Not the control, the tugger wire.

A To the left.

Q In order to reach the lever, what did you have to do?

A Reach over the tugger wire.

Q Could you give us a demonstration as to approximately what position your body was in as you were standing there holding on to the lever just before your accident

happened?

A May I have the --

THE COURT: Surely. You would like to have the drum?

THE WITNESS: Yes.

THE COURT: Here is the wire, the electric cord.

MR. DANAHAR: Your Honor, my question was simply how his body was situated.

THE COURT: But he asked for the drum and I accommodated him. I could very well say,"Listen to your lawyer," but he wants the drum, and I let him have it.

A This is the drum and I am standing similar to the way I am right now.

Q But now I am asking you as your hand was on the lever, in what position was your body?

THE COURT: Make believe the lever -- do you have a ruler?

THE CLERK: Yes.

THE COURT: This is the lever. Put this where you say the lever would be. You know, just give us a rough idea.

THE WITNESS: Right here.

THE COURT: All right, now, you go ahead and show us the position you were in.

THE WITNESS: Like this.

THE COURT: Bending over like that?

THE WITNESS: Yes.

THE COURT: Extending yourself; is that what you mean?

THE WITNESS: Yes.

THE COURT: Why did that become necessary? Why did you have to be like that? What made you stand like that?

THE WITNESS: To stand like that?

THE COURT: Yes.

THE WITNESS: Because if I was on that side of the wire and if I heard something, I have to jump over the wire to go to the door, you know, to see, and I didn't want to jump over the wire all the time because I thought it was dangerous, so instead I ran it from this side, thinking it wasn't dangerous at all, and running it and that was what happened.

THE COURT: Very well. I think that helps.

MR. DANAHAR: Except for this, your Honor.

THE COURT: I didn't cut you off. Go ahead.

BY MR. DANAHAR:

Q The tugger winch was not at the same level as this drum is, was it?

A No.

Q It was --

A Can I put it here?

THE COURT: Do whatever youwnnt just so as you make it clear to the jury what you are trying to tell us.

A It would be about that high.

THE COURT: You mean it actually was that high from the ground; isthat what you mean?

THE WITNESS: No. See, a little lower. She wouldn't be that high. She would be about 6 inches lower than she is right now.

THE COURT: All right.

THE WITNESS: The lever would be over here, like that, and I am running it and the wire is running here. I am running it and tapping it and I got caught.

THE COURT: All right.

Q How wide is the tugger winch, approximately?

A From the end of --

MR. DANAHAR: Your Honor, may I refer to this photograph? It's in evidence.

THE COURT: Surely.

MR. DANAHAR: There are measurements on here.

THE COURT: Won't you be good enough to tell us what it shows?

MR. DANAHAR: Yes. According to Defendant's Exhibit A-2, the measurements indicate that the width of the tugger, from end to end, including that part where the lever is, is 22 inches.

THE COURT: Thank you.

There it is. That's all. There is no question.

BY MR. DANAHAR:

Q Now, on the occasion of the accident you were operating the tugger winch and you had your right hand on the lever --

A Yes, sir.

Q -- and you were guiding the cable onto the tugger winch drum. What else were you doing?

A Trying to listen for the guys on deck. I was trying to do all three jobs without getting myself in trouble.

THE COURT: By "all three jobs," you mean?

THE WITNESS: Running the tugger winch, guiding the wire and listening for the guys on the deck.

THE COURT: There it is. That's his testimony. Next question.

Q When you say "listen to the guys on deck," you mean listen for signals?

A Yes, sir.

Q When your hand got caught on the cable, it was pulled into the winch, I think you said; is that correct?

A Yes, sir.

Q What happened to your body?

A I was pulled. I don't know if I went over or I was just pulled down. I got up and -- I guess I was in shock. I started to holler and my arm was stringing like a chicken without no head. You know, so I grabbed it and I walked over to the door -- not the front door on the port side, there is a door on the side also. I walked to that door and the mate, I believe, helped me down. I got down to the deck and they took me to the hospital.

Q You mentioned something about a door on the side. Where is that located?

A It's on the port side 5 feet back from the front.

Q Can it be seen in any of these photographs that were put in evidence?

A Only of thepicture of the dredge itself.

THE COURT: In the picture of the what?

THE WITNESS: Of the dredge.

THE COURT: Of the dredge itself.

Q You mean only in this photograph?

A Yes.

THE COURT: You are showing the witness Exhibit?

MR. DANAHAR: Exhibit QB.

A I believe you can make it out on that.

Q Would you point out that side door that you were talking about.

THE COURT: I think you better mark it SD, side door.

THE WITNESS: I don't think you can hardly see it, the SD.

THE COURT: All right, there it is.

Q From the position you were operating the tugger winch, do you even see the side door?

A No, sir.

Q Does the side door in any way assist anybody to look out on the forward part of the deck?

A No, sir.

Q How did you feel after the accident?

A (No response.)

Q Did you have any pain?

A Yes, a great deal.

Q Where did you have it?

A In my upper part of my arm -- the whole arm.

Q What took place after that?

A I got down on the deck and I believe the captain

and the mate -- they grabbed me, you know, and they walked me back to the stern and I told them, "You better grab me because I think I am going to faint." They got me on the boat, they took me to shore and we got a cab, myself and my brother, up to Polyclinic, and at the Polyclinic they took X-rays, they gave me needles for the pain, and they cleaned the area. They took my shirt off.

Q Excuse me a minute. You went to French Polyclinic Hospital?

A Yes, sir.

Q All right. Where is that located?

A Manhattan. I have no idea where.

Q Okay.

A The doctor there told me, you know, he knew a doctor on Staten Island, a Dr. Briggon. So, I went from Polyclinic to Doctors Hospital, and in Doctors Hospital they X-rayed some more and I was taped.

Q Excuse me a minute, before you go to Doctors Hospital. How did you feel?

A In great pain.

Q They had given you pain-killer in Polyclinic Hospital?

A Yes, sir.

Q Did that stop the pain?

A No, sir.

Q You continued over to Staten Island Hospital and when you got there what did they do?

A I went to the emergency room and Dr. Briggon met me and he, I believe, gave me some medicine. He taped me and put some salve on the burns on my arms.

Q Did you say burns on your arm?

A Yes, sir.

Q What was the burns from?

A I believe from the tugger wire coming up the arm and down. I was there 21 days for the swelling and everything to go down. The arm was out like a balloon. The swelling went down and they did operate on me after three weeks.

Q How did you feel during this 21 days as far as pain was concerned?

A I felt a lot of pain. They had me -- I couldn't lay down. They had me in a sitting position. I felt a lot of pain and I couldn't sleep. I did a lot of walking. When they did operate on me 21 days later it all started over. I mean, the pain was even more the first couple of days. What they did with the operation was they put a plate in my arm up here to keep it together because it was pulled apart and they examined the nerves

in my arm and they decided I couldn't use the wrist in the meantime, so they put a splint on the lower part of the hand so I could hold it up and it was all taped to me.

Q Let me interrupt you. How did your hand react at that time before they put the splint on it?

A I couldn't move it up whatsoever. I'd say I couldn't even move it. It was just --

THE COURT: Limp?

THE WITNESS: Yes. It was just limp. It was just hanging there.

Q You couldn't raise it up; is that right?

A No, sir.

Q Would you continue, Mr. Anderson.

A (No response.)

Q How long were you in the hospital?

A 31 days all told.

Q You were discharged on November 18; is that correct?

A Yes, sir.

Q Were you then an out-patient of Dr. Briggon's?

A I was an out-patient of Dr. Briggon's and Dr. Levinthal.

THE COURT: Off the record.

(Discussion off the record.)

Q While you were an out-patient, what was done for you in connection with your injury?

A They gave me a bigger splint to put on and I saw the doctors quite often. I saw one one week and then I saw the other the following week.

Q When you went to the doctor, what did they do for you?

A They examined my arm. They were hoping for some improvement and there was none.

Q What was the problem that they were hoping an improvement in?

A The radial nerve itself was torn. They would hope maybe it would improve, but they just -- it didn't, so I had to go to a specialist and they decided I needed another operation on the arm. I did go into another hospital.

THE COURT: What was the name?

Q Is that the New York University Medical Center?

A Yes. I went into N.Y.U. to get operated on. It was Easter weekend, I believe. It was Easter weekend and I was there --

Q What year is this now?

A '72. I believe it's '72. 18 months later. I had been going to these doctors and they decided I needed

another operation and they sent me from one doctor to another.

Q At this time 18 months later what was the condition of your left arm as far as your wrists were concerned?

A No improvement. I was still wearing a brace.

Q You were still wearing a brace?

A Yes, sir. I went into N.Y.U. and they took some tests and they found out they couldnt -- it wasn't they couldn't do the operation, the people wouldn't pay for the operation, the insurance people, so my doctors advised me -- he said, "Go to Marine Hospital and if you are not satisfied with the doctors, call me back and we will see what we can do."

So, I went to Marine Hospital --

Q When you are talking about Marine Hospital, you are talking about the United States Public Health Service Hospital which is a government hospital; is that right?

A Yes, sir.

Q You get free medical attention there being a seaman?

A Yes, sir.

Q All right.

A So, I went to Marine Hospital and I saw this

doctor. He said he could do the same operation as they were going to do at N.Y.U. and I had it done that May, the end of May, May 30, I believe. They did a tendon transplant. They transferred the nerve from one part of the arm to another. I believe there is four of them, because I have four different scars on the lower part of the arm besides on the upper.

MR. DANAHAR: If your Honor please, at this point may I ask whether I could have Mr. Anderson show the jury his arm and the various scars that he has from the operations?

THE COURT: Very well.

MR. DANAHAR: May I approach the witness?

I just want to help him with his coat.

THE COURT: No, sir.

MR. COHEN: I object to that, your Honor. That's uncalled for.

THE COURT: Objection sustained. Out. Forget it.

Stand in the middle of the floor, about the center of the jurybox.

THE WITNESS: This scar up here is from the first operation.

THE COURT: Speak louder so we can hear you.

THE WITNESS: This scar here is from the first operation.

MR. DANAHAR: Let the record indicate, your Honor, he is referring to the upper part of the arm.

THE WITNESS: Where they put a plate and if you could see this, this is the wire burn and it goes down quite far along here. That's over three and a half years ago.

The second operation they did, they cut me here, along here, one from here to here. It is starting to fade now. Here they cut me on the inside and they cut me from here to here the second time and they also reopened the top part and they took the plate out because the bone grew back and they feel that the plate would have done more harm than good in the future. That's all the scars.

There is one there, there, on the inside and there and that's the burn.

THE COURT: Would you please, while you are standing, Mr. Anderson, show us the extent of your movement of --

THE WITNESS: Of the arm?

THE COURT: Take it easy now. The left arm? Come up to the top. Now, forward. Now down.

Did you have any pain when you were doing that?

THE WITNESS: No, sir.

THE COURT: Can you push forward with your right hand as though you were going to deliver a blow; could you do that without force?

THE WITNESS: Well --

THE COURT: Give us the amount that you can do.

THE WITNESS: Yes.

THE COURT: Now do it with the other arm.

All right, sit down and put your coat on.

Next question.

Q Mr. Anderson, when you pushed forward with your left arm that time, was there any reaction in your left arm?

A Yes, sir.

Q What was the reaction?

A There was a pain up in the forward part.

Q In the upper part of the arm?

A Yes, sir.

Q Since this accident, have you had pain in that arm?

A Yes,sir.

Q When particularly do you get pain?

A When I try to do anything to an excess. If I am working, I can -- as long as I can take it easy it's all right. Once I start doing like I used to, it's terribly

inadequate. I can't -- if I am -- I will be holding something and the pain would come up here and I can't hold it because the pain is sharp.

THE COURT: Is that as of today, too?

THE WITNESS: Yes, sir. That's as of today.

THE COURT: At the present time?

THE WITNESS: At the present time.

THE COURT: All right.

THE WITNESS: I can pick something up this way, but I cannot pick it up this way because -- like if I had a weight in front of me, a heavy weight, I would not be able to pick it up this way because the wrist itself would not hold it becausewhen they did the tendon transfer, it wasn't only the tendons, it was muscles they moved for the wrist so I can move the wrist in an up-and-down position. That's as far as I can go. I can't move it sideways.

Q You can't move your left hand sideways?

A No, sir.

Q Can you bend it back?

A To an extent.

Q To that extent?

A Yes, sir.

THE COURT: Can you all see it?

All right.

A (Continuing) The hand itself -- I can't use the hand the way it was supposed to be used.

Q What about lifting objects, heavy objects?

A I can't. I might be able to do something for like 10, 15 minutes, but outside of that I just can't.

Q What happens after 10 or 15 minutes?

A I start to get pains in my arm.

Q No, the job of a deckhand, does that involve the handling and lifting of heavy objects?

A Yes, sir.

Q Does the job of an operator involve the handling and lifting of heavy objects?

A Yes, sir.

Q In addition to that, what else does an operator have to do?

A Run levers to make the bucket go up and down. In front of them there is a panel with levers and he has got to work them constantly. He also uses his arms and, you know, his hands. I wouldn't be able to do that too well.

Q For how long a period of time would the operator have to be manipulating these levers?

A Eight hours.

Q And sometimes do they work overtime?

A Quite often.

Q Could you perform the duties of an operator?

A Now?

Q In your present condition.

A No.

Q Could you perform the duties of a mate in your present condition?

A No.

Q Could you perform the duties of a deckhand in your present condition?

A No.

Q You have been working since this accident, haven't you?

A Yes, sir.

Q As a matter of fact, you are still working for Great Lakes, isn't that so?

A Yes, sir.

Q In what capacity?

A Day man.

THE COURT: May I interrupt? When did you go back to work? The date?

MR. DAHAHAR: I am going to develop that.

A (Continuing) A day man.

Q What does a day man do?

A He is more or less a kitchen boy. He cleans up, mops the floor, sweeps the galley, washes the windows, or supplies they would need for the machine and every now and then I might go out and give the deckhand, you know, a hand by doing something. Outside of that, it's limited.

Q When you say you go out and give a deckhand a hand, what would you do?

A He would be doing something like pulling slack in the wire. I would go out there and give him a hand for just pulling the slack, or he would be busy doing something else and I would move the spud ahead.

Q How long could you pull on that wire helping the deckhand?

A Like I said, there are three --

THE WITNESS: May I explain, your Honor?

THE COURT: Sure.

A (Continuing) There are three wires on a dredge, a bow, a stern and a spring wire, to hold the scow. Now, if you had to put slack on all three of them wires, I'd say I would be able to pull on maybe one; pull the slack out to what you would normally need to let the scow go.

Q What would happen after you started on the job like that, pulling that one wire?

A I would get a great deal of pain.

Q Now, the duty of a deckhand, though, is to handle these three wires; is that correct?

A Yes, the three wires and the lines.

THE COURT: And that you cannot do at the present time?

THE WITNESS: No, I cannot.

THE COURT: That's all I asked. All right, next question.

Q When did you return to work after the accident as a -- what did you say, a day man?

A A handyman.

Q When did you return to work as a handyman after the accident?

A I returned to work --

Q Approximately.

A June of '71, but not as a handyman, as a watchman.

Q Did you work continuously thereafter?

A No, sir.

Q Well, would you tell us something about what your work has been since June of '71?

A When I went back to work after the first operation, like nine months later, I went back as a watchman. The job as a watchman is watching the yard. You go around

and punch a clock and you make out a log of incoming calls. I did that four a couple of months, I believe, and then I went as a day man on the 53 and after that --

Q When you say 53, you mean Dredge No. 53?

A Yes. Dredge No. 53.

I was laid off for a while and -- may I say something?

THE COURT: Surely. Only in answer to the lawyer's questions. You see, you may say, "Well, what's the Judge so itchy about?" If you say something that you are not supposed to say, that's the end of the case; I have to discharge the jury and we have got to start all over again. That's the reason the Judge has to watch the witness. All of a sudden, he means well and he says something, but the jury has been prejudiced and the other side will move for a mistrial and that's what happens. So, just answer your lawyer's question. Okay?

THE WITNESS: Okay.

A (Continuing) After I was laid off, a couple of weeks later I went on the 53. I worked there for a couple of weeks and was laid off again. Then June -- in June of '72, I believe I went to work on the No. 51 as a day man.

THE COURT: That's two years ago, Mr. Anderson?

THE WITNESS: Yes.

A (Continuing) From June -- from January --

THE COURT: Of '72?

A -- until, say, to May of '72, when I went back in for my second operation, I was on that and then I was out for the second operation four, five months, I'm not sure, and then I went back to work again as a day man. Since that I have been on the machine, to this time, with previous lay-offs. I have been laid-off a couple of times because the machine -- there is no work from that machine.

THE COURT: What machine are you talking about?

THE WITNESS: The 51.

A (Continuing) They transferred the men from one place to another.

THE COURT: What have you been doing since the second operation? What kind of work have you been doing?

THE WITNESS: Handyman.

THE COURT: The duties of a handyman you described before?

THE WITNESS: Yes.

Q After that second operation at the Marine Hospital, have you been an out-patient at that hospital up to the present time?

A Yes, sir.

Q How frequently would you go over there for examination?

A First it was every couple of weeks and the last couple of months it varied. They would tell me to come back in two months because there ain't nothing they can do for me. You know, that's it. They told me to come back in a couple of months and they would check me out and give me a fit-for-duty slip and I would give it to my employer to go back to work.

Q When you went there on these occasions, to the Marine Hospital, I assume you told the doctors something about your condition?

A Yes, sir.

Q What did you tell them?

MR. COHEN: Objection.

THE COURT: Sustained.

Q Well, did you have any complaints about your condition when you went to the Marine Hospital?

A Yes, sir.

Q What were those complaints?

A Either I would be in pain or -- I wouldn't be able -- I feel terribly inadequate in the sense where I wouldn't be able to do something that I should be doing, or want to do, and I would have pain. I would tell the

doctor that I would be doing something and get pain and --

THE COURT: No, you must not tell us what the doctor said. You see, the jury doesn't know and neither do I what you were going through. Now, you are telling us this. What else do you want to say? You had pain?

THE WITNESS: Yes,sir.

THE COURT: It was constant; that is what you are saying?

THE WITNESS: Not constant. It would come and go.

THE COURT: Depending upon what you would do; is that what you are trying to say?

THE WITNESS: Not only that, but I would be at home and the pain would just come.

THE COURT: That's what the jury wants to hear, what you have got to say on that. What else do you want to say on that question, on that point?

THE WITNESS: I just get pain just by doing anything or just -- I don't know. That's it, your Honor.

THE COURT: Just take your time. It is not easy to explain. Pain has always been difficult to explain. That goes back long before we were around. To describe pain is difficult. Now, do the best you can to convey to the jury what you experienced with regard to the pain,

because they can't guess at it. You see, you are the one that says you had the pain. Well, tell them in detail. What other points do you want to say about the pain?

THE WITNESS: I would come when -- you would be wanting to do something and the pain would come and I would feel totally inadequate being the way I am, you know.

THE COURT: Yes.

THE WITNESS: I would feel I'm not doing my job to my capacity, you know, or whatever.

THE COURT: Do you still experience that kind of pain today at the present time?

THE WITNESS: Pain and feelings.

THE COURT: And what?

THE WITNESS: And the way I would feel. Like I said, I would be wanting to do something and I know I can't do it because the arm will start hurting me again.

THE COURT: I see, all right.

So, has there been any let up in that respect? In other words, has it been easier recently or is it the same that it was, let's say, a year ago?

THE WITNESS: The pain is still there.

THE COURT: Next question.

BY MR. DANHAR:

Q When was the last time you were over to the Marine

Hospital for an examination?

A Two weeks ago, I believe.

Q At that time you saw a doctor?

A I saw a specialist. I had been there previously --

THE COURT: You see, I have been allowing you to answer. Mr. Cohen hasn't interrupted or objected, but you must stick to the question. You saw a doctor two weeks ago, right?

THE WITNESS: Yes, sir.

THE COURT: He examined you, right?

THE WITNESS: Yes, sir.

THE COURT: All right, next question.

Q Do you know the doctor's name?

A No, I can't think of it. No, sir.

THE COURT: All right, next question.

Q After his examination, did he express an opinion as to your condition?

MR. COHEN: Objection.

A Yes,sir.

THE COURT: Objection sustained. You undoubtedly have the records and the doctors will be here.

MR. COHEN: I would hope so, your Honor.

Q Your brother, Bruce Anderson, was on the dredge on this particular day, wasn't he?

A Yes, sir.

Q Where is he now?

A He is home. He was hurt --

MR. COHEN: If your Honor please, I don't see what the relevancy of Bruce Anderson's present location is to the issues in this case.

THE COURT: Yes.

MR. DANAHAR: Can we approach the bench, your Honor?

THE COURT: You are volunteering more than you were asked. Where is he now calls for a place.

THE WITNESS: Home.

THE COURT: That's it. Next question.

MR. DANAHAR: I want to go into the same subject matter. May we approach the bench?

THE COURT: Surely. Come up.

(At the side bar.)

THE COURT: Now, sir?

MR. DANAHAR: Your Honor, since Bruce Anderson is his brother and he --

THE COURT: Come on into the robing room. We can talk a little louder there.

(In the robing room.)

THE COURT: All right, go ahead, Mr. Danahar.

MR. DANAHAR: Your Honor, the reason I am developing this is Bruce Anderson, who is his brother, had an accident recently and he was in the -- in some hospital in Staten Island. He just got out last week. I think it was Thursday, if I'm not mistaken. He had a back injurey and he was in traction in the hospital. He has been discharged to his home and he can't leave his home. So, I can't bring in as a witness, which I ordinarily would do. I am just trying to develop that now so that Mr. Cohen, on summation, will not refer to the fact that I hadn't brought in Bruce Anderson, the plaintiff's brother. That's the only purpose I have.

MR. COHEN: What kind of accident was this, may I ask, that he was in?

MR. DANAHAR: I understand he fell down some steps on this.

MR. COHEN: On the job or off the job?

MR. DANAHAR: On the job.

THE COURT: Bear with me for a moment, Mr. Cohen.

Mr. Cohen has a right to be satisfied on that score before he makes any concession. I would and a diligent lawyer should be expected to. All I think

you need to do -- and I may be wrong -- is to supply Mr. Cohen with some piece of evidence that he will find acceptable, maybe a statement from the doctor. After all, you can get that via telephone or send a messenger up and he will describe the condition of the witness's brother -- that's all -- and that he must be confined to his bed this day and cannot leave his bed. Can you get that?

MR. DANAHAR: I don't know if I can get it, you know, in time. That's the only problem.

THE COURT: Would you accept such a statement, Mr. Cohen?

MR. COHEN: I would like to see one, yes, your Honor.

THE COURT: I think you ought to get it.

MR. DANAHAR: Suppose I can't get it in time? That's the problem. I mean, after all, I am here in court.

MR. COHEN: That's right, and there are ways to perpetuate testimony, as judges in this court have indicated from time to time.

MR. DANAHAR: Would your Honor consider adjourning the trial so that I can take his deposition?

MR. COHEN: No.

THE COURT: No. Of course not.

MR. COHEN: I don't see why he can't get a simple

statement. If we could recess, he can call his doctor, and he can prepare it and he ought to be able to get it today.

THE COURT: Off the record.

(Discussion off the record.)

THE COURT: There has been an off-the-record discussion. I have made it clear that counsel cannot develop through the instant witness the reasons for the absence of his brother. Counsel is instructed to try to get the brother's doctor to make a written statement and he will somehow get that statement to Mr. Cohen so that he can examine it and if the statement is satisfactory, I'm sure Mr. Cohen will not offer any opposition. That's it, but if he sees fit to offer opposition and he has a tenable ground, I will have to then rule accordingly.

Okay, let's go.

(In the presence of the jury.)

THE COURT: Put your next question, Mr. Danahar.

BY MR. DANAHAR:

Q Mr. Anderson, did you have another accident after this one of October 18, 1970?

A Yes, sir.

Q Where did that accident take place?

A At my sister's home.

Q What happened?

THE COURT: How long ago was this?

Q When was it?

A June of '72.

Q Did you injure yourself?

A Yes, sir.

Q What part of your body did you injure?

A My wrist.

Q What happened?

THE COURT: Which wrist?

THE WITNESS: My left wrist.

Q What part of your wrist was injured?

A I fractured a bone.

Q Do you know which bone?

A No, sir.

Q Were you treated for that injury?

A Yes.

Q Where?

A Marine Hospital.

Q How long were you under treatment for that injury? Approximately.

A An hour.

Q What?

A One hour.

THE COURT: Was it an operation?

THE WITNESS: No.

Q What did you say, one hour?

A Yes, sir.

Q That was the first time you went there, it only took one hour; is that what you mean?

A Yes, sir. They put a cast on.

Q How long did you have the cast on?

A Six weeks.

Q After the six weeks was up they took it off?

A Yes, sir.

Q How was your hand after that, as far as that injury was concerned?

A It didn't affect it in the least.

Q What was your rate of pay before the accident?

THE COURT: I am hoping that counsel will agree on something like that. It's a matter of bookkeeping entry and I don't see why we have to sit here and have all of this when it can be agreed upon. It's in the records. How about it, Mr. Cohen, do you think you can have a stipulation on that?

MR. COHEN: I think I can get the records, Judge.

THE COURT: All right, get the records, and that

will be the easiest way. On a piece of paper, you set it all out, and that's it. Is that satisfactory?

MR. DANAHAR: Yes, but I am also interested in knowing the earnings of a mate and of an operator also.

THE COURT: Yes. Of course you are, but that can be stipulated. That's often done. I don't see why it can't be done here, so, will you please try to arrange that?

MR. DANAHAR: Yes, I will, your Honor.

MR. COHEN: Could we arrange for Mr. Anderson's income tax records for the appropriate years?

THE COURT: Can you get that, too?

MR. DANAHAR: Yes.

THE COURT: Turn that over to Mr. Cohen so he can help prepare it.

MR. DANAHAR: As a matter of fact, your Honor, I will offer them in evidence.

THE COURT: Any objection?

MR. COHEN: I would like to take a look at them, first, if I may.

THE COURT: All right.

MR. COHEN: Perhaps I can look at it during the luncheon recess.

THE COURT: Why don't you let him look at it

over the luncheon recess. He will take care of them and then state any objection he has after lunch.

MR. DANAHAR: Would you like me to have Mr. Anderson testify at this time what his earnings were each year from the date of the accident up to the present?

THE COURT: If he would feel better, do it, but I thought that would be the subject of a stipulation between the two of you. Whatever you can't stipulate to you can get from Mr. Anderson by calling him back if you have to. Is that all right?

MR. DANAHAR: Yes, your Honor.

BY MR. DANAHAR:

Q Mr. Anderson, at the time of this accident you were working as a deckhand; is that correct?

A Yes, sir.

Q But you also had the classification of a mate; is that right?

A Yes, sir.

Q You had worked as a mate at various times before this accident?

A Yes, sir.

Q What opportunities did you have to advance from mate -- what's the next step up from mate?

A Operator.

Q What opportunity did you have to become an operator?

A I'd say very good.

MR. COHEN: I'm going to move to strike that. I don't know what that means, what opportunity did you have, I'd say very good.

THE COURT: Yes. It's stricken.

Q When did you expect that you would reach the status of an operator in view of your --

MR. COHEN: I object.

THE COURT: Wait a minute. Let him finish.

Q In view of your experience working on dredges and knowing the advancement of operators?

MR. KOENIG: I object to the form of the question.

THE COURT: Sustained.

Q How does one advance from being a mate to an operator?

THE COURT: All right. You are saying how does he, and you are speaking as of today.

MR. DANAHAR: Well, back in 1970.

THE COURT: Now, back in '70, before your accident -- do you understand the question?

THE WITNESS: No, sir.

THE COURT: All right, repeat your question, counsellor, and put it in the right tense.

Q Back in 1970, what were the steps in advancing from one grade to the other, like from deckhand to mate and from mate to operator? How does that come about?

A When you are a deckhand, to become a mate you have to know the machine and the equipment and then it's up to the captain and the operators to say this man has qualified to become a mate. When you are a mate and you want to become an operator, the operators would break you in as an operator and then when a job -- an operator job would come up, you would be put into it.

Q How do you actually develop the skill to be an operator?

A An operator would be breaking in when you were a mate. They would teach you how to run the machine.

Q So you sort of practice with -

A Yes.

Q -- with an experienced operator, and then when you have reached the stage where you are qualified to handle it yourself, then what happens?

A You become an operator.

THE COURT: Who determines that, the captain?

THE WITNESS: The operators and the captain, sir.

THE COURT: Okay.

Q You mean the operator who trains you and the captain determines that?

A Yes, sir.

Q Now --

THE COURT: Were you telling us that you were doing some of that training under an operator before the accident?

THE WITNESS: I had been up in the cab, yes, sir.

Q When would you have expected to become an operator?

MR. COHEN: Objection, your Honor.

THE COURT: Sustained.

Q Do you know of any men who were of a lower rank than you in the year 1970 who have advanced to operator?

MR. COHEN: Objection. It is all a matter of individual ability.

THE COURT: Sustained. He has made it clear that if he shows an ability in that direction -- the operator and the captain can make a decision as to examining a man in a very short period of time and as against that, there are instances where the person takes a much longer

period of time, but when that time does come and they feel that he has the competency, then they see that he gets the promotion. That's the size of it, as I get it. Is that right?

THE WITNESS: Yes, sir.

THE COURT: Next question.

Q Does age have anything to do with whether or not you become an operator?

MR. COHEN: Objection.

THE COURT: Well, put it specifically to him.

At the time, shortly before your accident, did your age at that time in any way interfere with your becoming an operator if you qualified?

THE WITNESS: No, sir.

THE COURT: Next question.

Q Now, in this job of dredging, how many days a week do you work?

A It varies. Six or seven.

Q Six or seven?

A Yes, sir.

Q What determines whether you work six or seven?

A The particular job you are on, the location of the job, or if it was a government job or a private job.

THE COURT: How many hours a day?

THE WITNESS: Eight hours.

Q Are there some times when you work more than eight hours?

A Quite often, yes.

MR. DANAHAR: Your Honor, I have no further questions.

THE COURT: That's the end of your direct?

MR. DANAHAR: Yes,sir.

THE COURT: Very well. Would you rather start the cross after luncheon?

MR. COHEN: Very well.

THE COURT: Will you return promptly at 2 o'clock, ladies and gentlemen, and will you excuse the jury, please, Mr. Clerk, and make an announcement that we will resume at promptly 2 o'clock.

THE CLERK: The court is recessed until 2 o'clock. All rise.

(Luncheon recess.)

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A F T E R N O O N S E S S I O N
2.00 P.M.

(Jury present.)

THE COURT: Come back to the stand, Mr. Anderson.

M I C H A E L T. A N D E R S O N, resumed.

THE COURT: Cross-examination?

MR. COHEN: Thank you, your Honor.

CROSS EXAMINATION

BY MR. COHEN:

Q Mr. Anderson, near the end of this morning's session I believe you told Mr. Danahar that you went to see a doctor a couple of weeks ago?

A Yes, sir.

Q Is that a Dr. Marra?

A No. I don't think that's the name, no.

Q Did you ever see a Dr. Marra?

A Not that I can recall, no.

Q Well, this doctor that you went to see a couple of weeks ago, do you remember his name?

A I can't recall it, sir.

Q Was that a doctor or lawyer he sent you to?

A No, sir.

Q Who sent you to see him?

A The Marine Hospital.

Q Where was he located?

A I saw him in the Marine Hospital on the 5th floor of the main building.

Q His office was in the hospital or on the hospital grounds?

A He was a specialist who came in to talk about the accident.

Q Who treated you for the injuries in this accident, Dr. Briggon?

A Yes, sir.

Q Did Dr. Briggon perform the first operation on your arm?

A Dr. Briggon and Dr. Levinthal.

Q Who performed the second operation?

A A Dr. Wills.

Q Wills?

A Wills.

Q Dr. Wills?

A Yes, sir, I believe.

Q Did Dr. Briggon continue seeing you after Dr. Wills' operation?

A No, sir.

Q Did Dr. Briggon see you from the time that he

operated up until the time you saw Dr. Wills?

A No, sir.

Q When was it that Dr. Briggon, who had been treating you, stopped seeing you?

A He sent me to another --

Q When was it that he stopped seeing you?

A I can't recall.

Q Approximately.

A I can't recall.

Q When was it that Dr. Levinthal stopped seeing you? Approximately.

THE COURT: Can you give the year or the season of the year? If you remember.

A I can't recall.

Q Did you return to work, though, after they stopped seeing you?

A I was still under their care when I returned to work.

Q When you say them, you mean both Dr. Briggon and Dr. Levinthal?

A Yes, sir.

Q You would go to see both of them from time to time?

A Yes, sir.

Q So, it was some time after you began working that you did not see them any more; is that correct?

A Yes, sir.

Q Then about how long a period of time was it, would you estimate, between the time that you last saw Dr. Briggon and Levinthal and the time that you saw Dr. Wills?

A Ican't recall.

Q Now let me ask it to you this way. Dr. Wills performed the second operation and that was in May of 1972, was it, or '73?

A '2, I believe, sir.

Q '72.

Was that about the first time that you saw Dr. Wills?

A I saw him the month previous.

Q Before that, okay.

For how long before you first saw Dr. Wills had it been since you last had any medical treatment from any doctor?

A Since I last saw Dr. Wills?

Q No. Dr. Wills operated on you and did that transplant you spoke about in May of 1972 and he first saw you in April of 1972, right?

A Yes, sir.

Q What I am trying to find out is for how long before April of 1972 was it that you did not see any doctor for treatment.

A I saw doctors in April.

Q Who?

A Dr. Sprague.

Q Sprague?

A Yes. I believe that's his name.

Q Was he at the Marine Hospital, too?

A No, sir.

Q Where did you see Dr. Sprague?

A N.Y.U.

Q You said you had another accident in which you broke your left wrist?

A Yes, sir.

Q Where did that happen?

A At my sister's, sir.

Q Excuse me?

A I was at my sister's home.

Q Under what circumstances?

A It was --

MR. DANAHAR: I object to this, your Honor. I don't see the circumstances are relevant.

THE COURT: Surely the jury has to know the extent of that injury, the type of accident that was involved, in order to get an idea of what injury ensued.

MR. DANAHAR: All right.

THE COURT: Objection overruled.

How did you come to have an accident at your sister's?

THE WITNESS: My sister lives on Staten Island. She got like a little hill --

THE COURT: A little what?

THE WITNESS: Mountain, and at the end of the moutain there is a double gate. I was going down this little mountain to open this double gate for my brother to pull his car in, and as I -- I slipped and when you fall, you like brace yourself behind you, and I fractured my wrist.

THE COURT: All right, there it is.

Q You fell on your left hand, did you?

A I fell on both hands.

Q At your sister's?

A Yes, sir.

Q Does your sister live anywhere near you?

A No, sir. At that time I could say yes.

Q At that time?

A Yes.

Q Where did you live at that time?

A I believe on Staten Island.

Q At what address?

A 997 Renssalaer Avenue.

Q What address did your sister live on?

A 33 Terrace. No, I'm sorry, it isn't Terrace. I can't recall the street, sir.

Q It's unimportant.

How many blocks were there between your house and your sister's house?

A Maybe a mile.

Q A mile?

A Yes.

Q Do you remember being asked questions on an examination before trial just two months ago in my office and Mr. Danahar was present with you when you were asked a number of questions and they were taken down?

A Yes, sir.

Q You swore at that time to tell the truth; do you remember that?

A Yes, sir.

Q Let me read to you some of these questions and answers that you gave at that time, if I may. This is on

page 64:

"Q Since October 18, 1970, have you injured your left arm in any other accident?

"A Yes.

"Q You have?

"A Yes.

"Q When was that?

"A About February, '72."

Let me stop there for a moment.

When is it you testified incourt this morning you had this accident to your left wrist?

A June.

Q Of what year?

A '72.

Q '72.

Now, two months ago you said February. Which is the truth?

A It's June.

Q "Q What happened at that time?

"A I fractured it.

"Q Your left arm?

"A The wrist.

"Q How did that happen?

"A I slipped.

'Q Were you working for Great Lakes at that time?

"A No.

"Q Where did you slip?

"A Where?

"Q Yes.

"A At home.

"Q In your own house?

"A Yes, I believe."

Now, that's what you said under oath two months ago; is that right?

A Yes. And like I said, I believed.

Q You mean you are unsure --

A Now I'm sure.

Q You were unsure two months ago whether you broke your left wrist at your house or your sister's?

A Yes, sir.

Q And today you remember it better?

A I discussed it with my family and they pointed out --

Q Has other of the testimony you have been giving here today based upon discussions that you have had with other people?

A Sort of, yes.

Q Sort of.

What other testimony that you have given here today has been based on discussions that you had with other people?

MR. DANAHAR: Objection, your Honor. I think the question is too broad.

THE COURT: Objection overruled.

Is there any other testimony that you have given here today that you had discussed with other people?

THE WITNESS: Yes, sir.

THE COURT: Tell us which portions of your total testimony have you discussed.

THE WITNESS: I discussed different things with my lawyer.

Q Did you discuss with your lawyer where this other accident to your left wrist happened?

A No.

THE WITNESS: May I say?

THE COURT: No. Just answer the question.

A No.

Q Did you discuss parts of your testimony today with anyone else than your lawyer?

A Yes.

Q Who?

A My wife.

Q Your wife.

With anyone else?

A No. I don't believe so, no.

Q Excuse me?

A I don't believe so, no.

Q Your wife was nowhere near the place where this accident happened in October of 1970, was she?

A No.

Q Let me go back to that day, October 18, 1970. When you first started to work that morning, I believe you said it was about 7.30?

A Yes, sir.

Q You reported to the dredge at Pier 30?

A Yes, sir.

Q Who did you report to?

A Captain De Graff.

Q When you reported to him, did he at that time, at about 7.30, tell you what the work was to be that day?

A Did he tell me?

Q Yes, sir.

A No.

Q What did you do after you reported to Captain De Graff?

A We sat down and had coffee until we was told what

to do.

Q You had coffee on the dredge?

A Yes, sir.

Q Is there a coffee room there?

A Yes. There is a coffeepot on the machine.

Q What time was it that you were told what to do, approximately?

A A quarter to 8.

Q Were you told what to do in the coffee room?

A Yes. I believe so.

Q Who was with you at the time?

A I can't recall.

Q Who told you what to do?

A I believe it was Artie Ramos.

Q Artie Ramos was the mate; is that correct?

A Yes, sir.

Q Exactly what did he tell you the work was to be that day?

A Changing the wire.

Q Did he tell you where you were to go or specifically what you were to do?

A Yes, sir.

Q What did he tell you?

A To go up in the cab.

Q He told you to go up in the cab?

A I believe so, yes.

Q When you say you believe so, everything you have testified to here today is what you believed; is that correct?

A Yes, sir.

Q Are you in doubt about anything?

A There has been four years.

THE COURT: Just a minute. Even though it's been four years, he is entitled, and so is the jury, to know whether everything you have testified about you are absolutelycertain about or whether you have some doubt about because of the time that has elapsed. Do you understand?

THE WITNESS: Yes, sir.

THE COURT: We want to know what you are positive about and what you are not positive about.

THE WITNESS: Yes, sir.

THE COURT: Are you positive, for instance, about what you were doing that day the way you have described it here using the drum here in the courtroom; do you recall that distinctly?

THE WITNESS: Yes.

THE COURT: You have no doubt about that?

THE WITNESS: No, sir.

THE COURT: Is there anything in your testimony that you gave in answer to your lawyer's questions that you are not too sure about other than what you have already said when you answered and you said on occasion "I believe so," but is there anything that you would like to point out now before Mr. Cohen goes ahead that you were not sure about in connection with what you testified in answer to your lawyer's questions?

THE WITNESS: No, sir.

THE COURT: All right.

BY MR. COHEN:

Q Now, Mr. Ramos told you to go up to the cab?

MR. DANAHAR: Your Honor, may we have the time fixed when this --

MR. COHEN: I think he said it was a quarter of 8, Judge.

THE COURT: He said it was a quarter of 8.

MR. DANAHAR: That was when he reported to work, but I don't think there has been any time fixed --

MR. COHEN: But, your Honor --

THE COURT: Please. I have got to hear what he has to say.

MR. DANAHAR: I don't think there has been any time fixed when Mr. Ramos told him to go up to the cab.

THE COURT: All right, do you know what time it was when Mr.Ramos told you to go up to the cab?

THE WITNESS: No.

Q You went to the coffee room and you got there about 7.30 and you said at about a quarter of 8 Mr. Ramos told you where to go; isn't that what you just finished testifying to?

A He told us what job to do.

Q That was about a quarter of 8?

A Yes, sir.

Q When he told you what job to do, he told you you were to go to the cab; is that right?

MR. DANAHAR: I object to this, your Honor. He didn't say that at all.

THE COURT: When your lawyer speaks you just remain quiet.

Now, I want you to tell us, Mr.Witness, what your best memory is on that day that we are concerned with. You got there around 7.30; am I right?

THE WITNESS: Yes, sir.

THE COURT: Then you spoke about having some coffee and then around a quarter of 8 -- that means about 15 minutes after you reported--there was a statement made as to what all of you were going to do; what kind of job

you were going to do; is that right?

THE WITNESS: Yes, sir.

THE COURT: Now, the lawyer wants to know, do you remember in connection with that job that you all were going to do when Ramos told you to go into the cab, as you think back, do you remember about what time it was when he said that?

THE WITNESS: No, sir.

THE COURT: All right, next question.

MR. COHEN: That wasn't exactly my question, your Honor.

THE COURT: Then I'm sorry.

MR. COHEN: That's all right, your Honor.

BY MR. COHEN:

Q Was it at about a quarter of 8 when you were still at the coffee room when Mr. Ramos came in and gave some work instructions for the day?

A Yes.

Q What instructions did he give at that time?

A We are changing the closing cable.

Q Did he at that time tell you specifically what you were to be doing in connection with that operation?

THE COURT: At that time.

A No, sir.

Q Did he at that time tell any of the other individual men what they were to be doing in connection with that operation?

A No, sir.

Q How soon after a quarter of 8 did the actual operation of reversing the cable begin?

A 8 o'clock, sir.

Q What did you do during the intervening 15 minutes?

A Get the stuff ready.

Q Did anyone tell you specifically what you were to be doing in connection with that operation?

MR. DANAHAR: At what time, may I ask, your Honor?

MR. COHEN: At any time before he began.

THE COURT: Any time before you began.

A Before we began, no.

Q Before you began, how did you know what your job was to be in connection with that operation?

A It was standard procedure.

Q What was the standard procedure for you?

A To get the tools ready.

Q And then to do what?

A Go up in the cab.

Q So that your job was in the cab and you knew that; is that correct?

A Yes, sir.

Q What tools did you have to get ready to take up into the cab?

A The ratchet, a sledgehammer and a punch bar -- a punch hammer.

Q How about a pinch bar?

A No.

Q Was there a pinch bar in the cab?

A Yes, sir.

Q What time did you go up into the cab?

A 8 o'clock.

Q Did anybody else go up into the cab with you at 8 o'clock?

A Yes, sir.

Q Who went into the cab with you at 8 o'clock?

A Bruce Anderson.

Q Your brother?

A Yes, sir.

Q Yes.

A And one other person I'm not sure of.

Q You are not sure of who?

A No.

Q Your brother Bruce, is he an older or younger brother?

A He is a younger brother.

Q Had he been working on dredges longer than you or not?

A No, sir.

MR. DANAHAR: Objection, your Honor.

THE COURT: He already answered it. You want the answer stricken?

MR. DANAHAR: He already answered that last question?

THE COURT: Yes.

MR. DANAHAR: No, leave it in.

THE COURT: All right.

13 Q Were you and Bruce and the third man -- are you sure there was a third man up with you at that time?

A Positive.

Q But you don't know who it was?

MR. DANAHAR: Your Honor, I object to this. He already said he doesn't know who it was.

THE COURT: Objection sustained.

Q Under the standard procedure, who was supposed to be the third man that you say goes into the cab?

A Artie Ramos.

Q The mate?

A Yes, sir.

Q Was he with you there at 8 o'clock?

A I'm not sure.

Q Where did the rest of the men in the crew disperse themselves?

THE COURT: Where were they?

Break your questions down to the simplest terms.

MR. COHEN: Yes, your Honor.

Q There would be three other men left in the entire crew; is that right?

A Yes -- no, sir.

THE COURT: How many?

THE WITNESS: If there are three up in the cab, you are only two guys left.

Q Two plus the captain?

A The captin does not help.

Q But of the eight men that are on the dredge -- was the captain on the dredge that morning?

A Yes, sir.

Q If there are three in the cab, then there are three elsewhere; is that correct?

A Yes, sir.

Q Under the standard procedure, the captain takes

no physical part in these proceedings of reversing the cable; is that right?

A No, sir.

Q Where were the other two men, then, who do take a part in reversing the cable located?

A I can't say, sir.

Q Weren't you at that time familiar with the standard procedure?

A Yes.

Q Under the standard procedure, where were they to go?

A The engineer would be doing something else. The maintainers -- it was the maintainers' watch.

The engineer would be doing something else.

Q I'msorry, I didn't hear the first part.

A The engineer would be doing something maintaining something in the engines.

Q Where are the engines located?

A In the center of the dredge.

Q He would be involved in maintaining the engines, standing by the engines?

A At times, sir.

Q Well, in this operation of reversing the cable --

A Yes, sir.

Q Where would the engineer be?

A He would be up there giving a hand.

Q He would be where?

A Up there giving a hand.

Q Up where?

A Up in the cab.

Q So that would be the fourth man in the cab?

A Yes, sir.

Q Where would the fifth man be?

A Getting stuff ready on deck.

Q On the deck of the dredge?

A The dredge or the scow, whatever.

Q Getting what stuff ready?

A The torch.

Q Yes?

A A sledgehammer, a punch, a rope.

Q So you are saying under the standard procedure -- let me go back a minute.

When you first began working for Great Lakes, you started working as a deckhand; is that right?

A No, sir.

THE COURT: Mr. Cohen, may I please ask you to step back to the lectern?

MR. COHEN: Absolutely, your Honor.

THE COURT: This is so you will raise your voice and he will raise his in order to reach you and then we will be able to hear.

Q When you first began working for Great Lakes, you worked as a deckhand?

A No, sir.

Q What then?

A A sandbagger.

Q Isn't that really a deckhand who is just filling a bag with sand?

A A sandbagger is a particular job.

Q It's the same rate of pay as a deckhand; isn't it?

A Yes, sir.

Q You worked for one week doing that job of filling bags with sand?

A Approximately, yes.

Q And then you began work as a deckhand; right?

A Yes, sir.

Q How did you learn the work of a deckhand?

A By watching.

Q Who would you watch?

A The mate.

Q That would be Mr. Ramos; is that right?

A Mr. Ramos was not my first mate.

Q Okay. Who was?

A GI Joe.

Q Okay.

Was Mr. Ramos working on the Dredge No. 50 at that time?

A No, sir.

Q The way you learned is by watching others until you learned the tasks or jobs themselves and that is what you did as time went by to learn the deckhand's job; is that a fair statement?

A Yes, sir.

Q And then you start learning the duties of a mate by watching what the mate does and you hope to progress into the mate's position at a later date; is that right?

A Yes, sir.

Q And the mate, if you ask, will take you around and show you how he does his work and what's to be done, explain things to you sort of to break you in; is that correct?

A Yes, sir.

Q By August 18 of 1970, you had reached a point where both the captain and the mate felt that you were able to fill in as a relief mate when the regular mate was

on vacation; is that right?

A Not August, sir.

THE COURT: Not August? You said August 18.

Q I'm sorry. October 18?

THE COURT: You did say August 18 and he has corrected you.

MR. COHEN: Yes, you are right.

Q By October 18, 1970 --

A Yes.

Q -- you had reached that point where the captain and the mate felt you could fill in as a relief mate; is that right?

A Yes, sir. I had a mate's book.

Q You don't take any tests to advance from a deckhand to a mate, do you?

A No, sir.

Q It's when the captain feels you are able to work as a mate, he will let you do that job for a day and when you do that job you then have to go to your union and get the book for a mate; is that correct?

A It isn't for a day, sir.

Q For how long do you have to fill in as a mate before you are able to get the book as a mate?

A It varies.

Q It varies from what?

A On a particular man.

Q Who decideswhether you get a union book as a mate?

A The union.

Q How many days of service as a mate do they require?

A Like I said, sir, it varies. It could be a day or it could be a year.

Q Does the union give you a test when you apply for a book as a mate?

A They know your qualifications.

Q Who in the union watches you working as a mate before you get the book?

A The different men on the machine, sir.

Q I'm sorry, the different men on what?

A On the machine.

Q On what machine?

A The machine you are on.

Q In other words, the Dredge 50?

A Yes, sir.

Q So, the union bases of giving the book are the reports that they get from the people on the dredge you are working with; is that correct?

A Yes, sir, and the captain.

Q Isn't it really the captain's recommendation that controls?

A Not all the time, sir.

Q Now, as a mate you have to supervise the work of the deckhands, do you not?

A Yes, sir.

Q You have got to be familiar with all the operations and procedures, do you not?

A Yes, sir.

Q Now, as a person who was already serving as a relief mate on October 18, 1970, you were familiar with the standard operations and procedures that would take place on that dredge, were you not?

A Yes, sir.

Q Familiar enough so that you could supervise others in the doing of those operations, correct?

A Yes.

Q Now, your testimony is that when the cable is to be reversed, four men would be up in the cab, you and three others, and one man would be down on the deck getting a blowtorch and other tools together?

MR. DANAHAR: Object to the form of that question, your Honor. I don't think there is testimony pertaining

to that fact.

THE COURT: Yes, the form is objectionable. I will sustain the objection. Reframe the question.

Q Mr. Anderson, didn't you just testify to us a little earlier that you, your brother, a third man, possibly Mr. Ramos, but you weren't sure, and the engineer all went to the cab at the beginning of this operation?

A No, I didn't. Then maybe I --

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THE COURT: May I just suggest, Mr. Cohen, please, this? There was a line of inquiry by you as to the general approach to a problem of that kind, to a disposition of that nature, what you generally do. Then you asked who it was on that particular occasion, October 18, 1970. That was never cleared up, as to whether you were talking about the general situation or what happened on October 18. I would like to put the question myself, if you don't mind.

On October 18, 1970, when you had your accident, what is your sworn testimony before this jury as to who was in the cab with you?

MR. DAMAHAR: If your Honor please, may we have the time fixed? At the time of the accident or in the beginning of the operation?

THE COURT: At the beginning of the operation

when you went up there to start.

THE WITNESS: In the start?

THE COURT: Yes.

THE WITNESS: Two guys.

THE COURT: You remember that distinctly?

THE WITNESS: Your Honor, may I phrase how?

THE COURT: I asked a very simple question. On October 18, 1970, when you first stepped into the cab, was anybody with you?

THE WITNESS: Yes, sir.

THE COURT: Who?

THE WITNESS: My brother.

THE COURT: There is your answer. Anybody else?

THE WITNESS: I believe so, yes.

THE COURT: Who?

THE WITNESS: I'm not sure if it was Art Ramos or Eddie Ducey.

THE COURT: There was a third person?

THE WITNESS: Yes.

THE COURT: Was there also another?

THE WITNESS: I can't say.

THE COURT: By that you mean you don't remember one way or the other?

THE WITNESS: Right.

THE COURT: Now I have got it clear.

THE WITNESS: Okay.

THE COURT: Next question.

BY MR. COHEN:

Q Now, was that the standard operating procedure that at the beginning of that kind of an operation there would be three people in the cab?

A Not actually the beginning. After you get the wire down --

Q We didn't ask you about that. His Honor asked you at the beginning of the operation how many people went into the cab with you and you said yourself, your brother and a third person, either Mr. Ramos or Mr. Ducey. I am asking you the same question.

Was it the standard operating procedure for three men to go into the cab with you at the beginning of that operation?

A Can you say that in another way, please?

Q Well, let me do it this way. Look, you have got five men who you say are involved in reversing the cable, right?

A Yes, sir.

Q When the job of reversing the cable begins,

some of those men have to go up to the cab; is that correct?

A Yes, sir.

Q How many have to go up to the cab at the beginning of that operation?

THE COURT: For that particular type of operation, how many generally go up to the cab?

THE WITNESS: At the very beginning?

THE COURT: Yes, sir.

A Two.

Q Which two went up to the cab at the very beginning on October 18, 1970?

A I believe me and my brother.

Q You and your brother.

That left three other men --

A Yes, sir.

Q -- who were not in the cab; is that correct?

A Yes, sir.

Q Now, under standard operating procedure, where would those three men go at the beginning of the operation?

A One guy would go to -- the operator, he would go up to operate.

Q That would be Mr. Ducey?

A Yes, sir.

Q He was the operator?

A Yes, sir.

Q If we can refer to this photograph 2-B, he sits in that glass-enclosed cab that shows in this picture where you see the silhouette of a man?

A Yes, sir.

(Exhibit shown to jury.)

THE COURT: Show it to the balance of the jury. You can't just show it to one part of the jury.

MR. COHEN: You are so right, Judge.

Q And your brother was up in the cab, Mr. Ducey was at the operating controls in his place and where were the other two men at the beginning of the operation?

A On the scow.

THE COURT: Now, I insist that hereafter you must make it perfectly clear that you are now talking about the general operation procedure for an undertaking of that kind as distinguished from what happened on this particular occasion on October 18, 1970. Make it very clear so that there will be no doubt in this witness's mind.

Q Is that the way the men were distributed at the beginning of the operation on October 18, 1970?

A I believe, yes.

Q Is that the standard way for them to be distributed under an operation of this type?

A No.

Q No?

What would be the standard way?

A The operation would go up in the cab --

Q He was there, right?

A Okay.

Q All right.

A One guy would watch the drum while it is overhauling --

Q Excuse me.

THE COURT: Please, I would like to have him answer. Please finish your answer, Mr. Anderson.

A (Continuing) One guy would watch the drum while the operator --

THE COURT: Would you start again, please. I'm sorry.

A (Continuing) The operator would bein the cab. One guy would be watching the drum while the operator on this particular machine, he is either swinging it or we're pulling it down with another wire and two guys or three guys would be on the scow moving the wire when it comes down up and back down the scow to keep it from going overboard -- or just to keep it in a normal pile. The guy in the cab, when you get about a half a turn left

on the drum, would bang on the side of the cab so the operator know know to stop because he cannot hear you otherwise. He would bang on the side of the cab, the operator would know to stop the drum, right? Then another man, besides the guy watching the drum, would go up on the roof, tie it off, and the mate, the deckhand -- the two deckhands would disconnect it from the drum, hook it up into the tugger wire and then slack it off, the tugger wire -- slack the tugger wire off and pull the other wire down.

Q Mr. Anderson, on the morning of October 18, 1970, when this operation began, didn't two men go on the scow?

A Yes, sir.

Q Didn't the operator go into the operator's cab?

A Yes, sir.

Q Didn't you and your brother go into the other cab?

A I believe so, yes.

Q Isn't that the standard operating procedure as to where the men go at the beginning of this kind of an operation?

A I just said no.

Q Well, I didn't understand when you said no what

the difference would be as to where the men would go in the standard type of operation.

MR. DANAHAR: If your Honor please

Q Let me ask it to you this way, if I may.

THE COURT: Wait a minute. If counsel rises to object, I have got to listen to him. What do you say, Mr. Danahar?

MR. DANAHAR: I think Mr. Cohen is assuming that there is a standard procedure. There hasn't been any testimony yet there is a standard procedure. The form of his question I object to because he assumes in his question that there is a standard procedure.

MR. COHEN: He may be right. I will adopt his suggestion, yes.

THE COURT: Straighten it out.

Q Is there a standard procedure or was there a standard procedure on the No. 50 as to how the five men would be dispersed at the beginning of this kind of an operation?

A No.

Q Okay.

Then how would they know where to go for this? How would each of the five men know where to go or what to do at the beginning of this kind of operation?

A The mate or operator would tell them.

Q He would tell each one individually where to go?

A Yes, sir.

Q You said that nobody told you specifically where to go because you knew where to go?

A Yes, sir.

Q So you had a job already assigned to you; is that right?

A Yes, sir.

Q Do you know whether the other four men also knew where to go because he had done this before as well as you?

A No, sir.

Q When you went up to the cab, did you see where the other men went?

A I believe so, yes, sir.

Q The two men that went on to the scow, their job was -- tell me if I am right or wrong -- to disengage the closing wire from the bucket; is that correct?

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THE COURT: Disengage? Strike that. Change it.

MR. COHEN: To disconnect.

THE COURT: Put the question again. Their job was --

MR. COHEN: To disconnect the closing wire from the bucket.

THE COURT: Was that their job, Mr. Anderson?

THE WITNESS: Like I said, it isn't standard procedure.

THE COURT: No. On that date.

THE WITNESS: On that day, no.

Q In order to reverse the ends of the closing wire, wasn't it necessary that the end that was attached to the bucket be disconnected?

A Yes, sir.

Q Where was the bucket put down so that the end of the wire connected to it could be disconnected?

A On a bucket scow.

Q That was alongside the dredge; is that correct?

A Yes, sir.

Q Did two men go aboard the bucket scow?

A I believe so.

Q Do you know who those two men were?

A Art Ramos and Normal Hebert.

Q Did they go aboard the bucket scow to disconnect the bucket from the wire at that end?

A No, sir.

Q What did they go aboard there to do?

A To guide the wire up and down the scow while he was pulling it off.

Q Is the bucket removed from the wire before the wire is all taken down onto the scow?

A Like you said, sir --

MR. DANAHAR: I ask that it be restricted to this particular day --

THE COURT: Yes.

MR. DANAHAR: -- not what is done generally.

THE COURT: Right.

Q On this day, do you know what the two men who went on to the scow did at the beginning of the operation?

THE COURT: Do you know? That's what he asked you, do you know.

A No.

THE COURT: Next question.

Q Do you know what the operator, Mr. Ducey, did at the beginning of the operation?

A Yes, sir.

Q What did he do?

A He went up in the cab.

Q What did he do from his place in the cab?

A He swung the boom.

Q He swung the boom to where?

A Not to where, he swung the boom so they could pull the wire off.

Q So who could pull the wire off?

A The guys on deck.

Q The men on the deck of the scow?

A Yes, sir.

Q That meant they had to pull on the wire itself; is that right?

A No, sir.

Q How did they pull the wire off?

THE WITNESS: On that particular day?

THECOURT: Yes.

Q Yes.

A The bucket is on the scow. The scow is here and the dredge is here. The operator will swing the boom as far as he can to the one side and when he brings it back you would be pulling the wire on to the deck and when you get the wire on to the deck and the boom is all the way over, you tie it off and then he swings again.

Q When he swings the boom, the operator, Mr. Ducey, does that have any effect of taking all the closing wire off the closing winch drum and bringing it out so that it can be pulled on to the scow?

A It isn't a closing -- yes, sir.

Q As those turns come off the closing winch drum, you get down to the bottom and of the wire on the drum,

on the closing winch drum, and that is secured by some bolts or nuts or something; is that right?

A You do not come all the way to the bottom, sir.

Q You come close to it?

A You come to almost -- a half-turn or a whole turn. It depends on the occasion of the nuts.

Q When there is only that much left on that drum, then it's necessary to unbolt or unscrew, whatever it is, the end of the wire that's connected to that drum; is that right?

A First you tie it off.

Q Yes. Right.

Now, until that point is reached, the man in the cab, you and your brother are doing what?

A Watching so the operator does not go past the last turn.

Q The total winch is not being used at all for this part of the operation; is that correct?

A No, sir.

Q You and your brother were in there to remove the bolts that kept that end of the closing wire secured to the closing drum; is that correct?

A No, sir.

Q Well, after the closing wire was taken off the

drum except for that last half-turn or so, who took the bolts off it?

A Who took it off?

Q Yes.

A I can't recall who took it off.

Q Did you take it off?

A I believe it was Artie or Eddie. You use an airgun to take it off, sir.

THE COURT: How you are telling what you use. The point is do you remember. That's what he is asking.

THE WITNESS: No, sir.

THE COURT: If you are going to guess, then he has got a right to spend an hour to try to find out where it leads to. Do you understand that?

THE WITNESS: Yes, sir.

Q You said Artie or Eddie. When did Artie or Eddie come into the cab?

THE COURT: On that day.

Q On that day, yes. On that morning.

THE COURT: We are only talking about October 18, 1970, the day of your accident.

A When you get down to your last turn, the machine is stopped. The men come up to the cab—one guy would go up to the roof, tie the wire off, and then there would

be -- you would be getting stuff ready inside the cab to disconnect the wire, and that's when the men would come up.

Q The wire that you and your brother were watching go out, the closing wire, is shown on this photograph, Exhibit 2,as this wire running from that big closing drum up through the opening in the cab above; is that right?

THE WITNESS: May I see it?

THE COURT: You want to see it a little closer?

THE WITNESS: Yes.

MR. DANAHAR: May we have for the record what exhibit he is saying?

MR. COHEN: I said 2.

THE COURT: He did say it.

Q You marked on Exhibit 2 the letters in red CC for closer cable, didn't you?

A Yes, sir.

Q Isn't that the closer cable wire that was coming off this big closer cable drum which you have marked with a CCD on that photograph; isn't that right?

A Yes. That's the one I was watching.

THE COURT: That's the one what?

THE WITNESS: I was watching.

THE COURT: Watching?

THE WITNESS: Yes.

THE COURT: What do you mean by watching? I don't understand.

THE WITNESS: I was watching -- he asked was myself and my brother watching it. I'm saying that's the one I was watching.

THE COURT: When you watch, what do you do?

THE WITNESS: You watch the cable so it don't come all the way off.

THE COURT: All right.

Q In other words, this cable had a number of turns around that closer drum and you were watching to make sure that it wasn't pulled all the way off --

A Yes, sir.

Q -- before it was unsecured; is that right?

A Yes, sir.

Q That's the only cable that was moved at that time in the operation; isn't that right?

A Yes, sir.

Q Your brother was in the cab; correct, sir?

A Yes, sir.

Q What was he doing at that time?

A Getting the air gun ready.

Q Getting the air gun ready?

A Yes, sir.

Q Which air gun?

A The air gun you use to take the nuts off.

Q Where did the air gun come from?

A You bring it up from downstairs.

Q Did your brother bring the air gun up into the cab when he went into the cab with you?

A I can't recall, sir.

Q How long did it take for that closer cable to be removed to the point where it now had to be taken off from the bolts?

A On that particular day or --

THE COURT: That's all we are talking about, that particular day.

Q That's all we are talking about, on that particular day.

A On that particular day, a half-hour.

Q So you stood by watching that cable move off the drum up through that opening in the cab for about a half-hour, right? You just stood and watched it?

A Somebody has to.

Q I am not arguing with you about that.

THE COURT: No. Did you do that or didn't you?

THE WITNESS: Yes.

THE COURT: Next question.

Q Now, when it reached a point where it was near the end, you made a bang on this wall here, the forward wall, so the operator could hear you?

A I believe so, yes.

Q That was a single method that you and the operator had so you could communicate with each other; is that right?

A Yes.

Q How many bags did you give so that he knew it was time to stop -- let me withdraw that.

The controls that make this big drum go around are located in the operator's cab on the other side of this wall; is that correct?

A Not on the other side.

MR. DANAHAR: Your Honor, I think --

THE COURT: He said no. Next question.

Q It's in the operator's cab that you have the levers and controls that make this big drum go round?

A Yes.

Q So you wanted to signal to him that it was now near the bottom end and he should stop turning it until you have a chance to remove it from the drum: is that right?

A No, sir.

Q Didn't you want to signal to him that the cable had now come off so it was near the bottom end and it was time to remove it from the nuts?

A Yes, sir.

Q All right.

How did you signal that to him?

A I believe I banged on the house.

Q When you say banging on the house, is that on this forward wall shown here?

MR. DANAHAR: Your Honor, may the witness see the photograph close hand rather than way back here before he answers that question?

THE COURT: Yes.

When you say banging on the wall, would you put a zero, an O, indicating the place that you banged.

Do you understand what I just asked?

THE WITNESS: Yes, sir.

THE COURT: All right, there is the pen right there. Put a letter O if you remember approximately where you banged as you testified.

THE WITNESS: I can't.

THE COURT: You can't?

THE WITNESS: No.

THE COURT: All right.

Q Is that shown in the photograph or dont you remember? That's the point.

A I can't recall.

THE COURT: All right. There is the answer. Next question.

Q Now, where in relationship to the area shown in this photograph, Exhibit 2, would the operator be?

A He wouldn't be in that picture, sir.

Q I know it, but where in relation would he be? Would he be on this side of the wall, up above, outside? Where is his cab located in relation to what's shown here?

A His cab is over here, sir, on the starboard side.

Q Could you make -- make a rectangle on this, if you would, to show us approximately where the operator's cab is in relation to this? Just draw a square on here.

MR. DANAHAR: Your Honor, I think it should be determined first whether he could do such a thing.

THE COURT: Yes. Can you do that?

THE WITNESS: Not on this picture, your Honor.

THE COURT: Why can't you do that?

THE WITNESS: May I have a picture of the dredge, your Honor? May I have a picture of the dredge itself?

MR. COHEN: Yes, I have that.. Let me give it to him.

THE COURT: Surely.

Q Let me show you this photograph, Exhibit 2-B. Is that the one you wanted to take a look at?

A Yes.

THE WITNESS: Your Honor, may I show it to you first?

THE COURT: Show it to the jury first. Turn around and let them see what you are trying to say. Take your time.

A (Continuing) Here is the cab --

THE COURT: Can you all see it? If you can't, I will make him go around there. Tell me, can you see what he is doing? Use this pencil, not your finger. Take your time.

A This is where the wires are, right here. Now, the operator sits up here. Now, according to this picture I could not mark where he is because he is above it more or less.

THE COURT: All right. There it is. That's his answer.

MR. COHEN: Right.

Q Now, the cab in which you were shows up on this

photograph, Exhibit 2-B, as having a door with a window right behind the door; is that correct?

A Yes, sir.

MR. COHEN: May I just point that out to the jury, please, your Honor? This won't take very long.

THE COURT: Sure. Just point to it without any comment.

MR. COHEN: I am not saying a word, Judge. I am just showing them the door and the window.

(Exhibit shown to jury.)

THE COURT: All right, Mr. Cohen, next question.

Q The forward part of that cab has a wall that's slanted at an angle; is that right?

A Yes, sir.

Q That angled wall shows up in this photograph No. 2; is that correct?

A Yes, sir.

Q It has the forward wall?

A Yes, sir.

Q It's on the opposite side of that forward wall and slightly above it that you find the operator in his cab as shown in this photograph 2-B; is that correct?

A Yes, sir.

Q So that when you banged at some point on that

forward wall, he hears you on the opposite side of that wall in his cab; is that right?

A Yes, sir.

Q Did you have developed with the operator over the years that you have been working together a definite signal system so that he understood what a certain number of bangs meant and vice-versa?

A No, sir.

Q How many bangs did you give him when it was time for him to start moving that closer cable drum?

A I can't recall, sir.

Q Did he stop moving it?

A Yes, sir.

Q Was it then stopped?

A Yes, sir.

Q Then was it necessary to remove the bolts from the closing cable that secured it to the drum?

A Yes, sir.

Q Who did that work?

THE COURT: On that day?

MR. COHEN: Yes. That's all I am talking about.

Q On that morning, who took the nuts off that closer cable?

A I can't recall.

Q Were you present when the nuts were taken off the closer cable that day?

A Yes, sir.

Q Who else was present with you?

A My brother, Bruce Anderson, and I can't recall who else.

Q Was anybody else present?

A Yes, sir.

Q Now let me see if this helps you remember. I am again reading from the sworn testimony you gave two months ago on December 13, 1973. This is starting from the bottom of page 13.

"Q You put this thing on the scow. What did she do as far as the cable is concerned? That is what I am trying to find out.

'A Myself?

'Q Right.

"A I took the nuts off the cable from the drum, hooked up the Chinese finger to it, hooked up the small wire."

Do you remember giving that testimony?

A Yes, sir.

Q Wasn't that your best memory two months ago?

A That was in general, sir.

Q I'm sorry?

A That was in general.

THE COURT: That was in general.

Do you mean the general practice?

THE WITNESS: Yes, sir.

THE COURT: All right.

Q Well, let me read a little earlier from page 13.

"Q No. You said you got up. I want to know what you did, not what you generally do. Tell me what you did.

"A What I did?

"Q Yes.

"A I can't recall offhand.

"Q Do you have any recollection of what you did in connection with this cable on this day?

"A We unhooked it from the drum. I get the torch, get the hammer, get the sledgehammer, I put it on the scow.

"Q You put this thing on the scow. What did you do as far as the cable is concerned? That is what I am trying to find out.

"A Myself?

"Q Right.

"A I took the nuts off the cable from the drum, hooked up the Chinese finger to it, hooked up the small wire."

Wasn't that the testimony you gave two months ago?

A Yes, sir.

Q By the way, is this a type of a Chinese finger?

A I cannot see, sir.

THE COURT: You better have the clerk mark that for identification.

MR. COHEN: I will offer it in evidence in a moment, sir.

THE COURT: All right.

17 Q Is this an example of what you meant by a Chinese finger when you used that term on your deposition?

A Yes, sir.

MR. COHEN: May I offer that in evidence, your Honor?

THE COURT: Any objection, Mr. Danahar?

MR. DANAHAR: May I have a voir dire on that, your Honor?

THE COURT: Sure.

MR. COHEN: It's only for demonstrative purposes.

THE COURT: Do you still want to voir dire?

MR. DANAHAR: Yes.

VOIR DIRE EXAMINATION

BY MR. DANAHAR:

Q Is this the exact type of Chines cable that you referred to and that was used on the day of this accident?

A It's similar.

Q Similar?

A Yes, sir.

Q Is this the same size?

A No, sir.

Q What's the difference between this one and the one you used on the day of the accident?

A The size. The ones we use are much bigger.

Q In which way, in length?

A In length and size and width.

MR. DANAHAR: I object to it, your Honor.

THE COURT: Objection sustained.

MR. COHEN: Your Honor, I just wanted the jury to see what a Chinese finger is, that's all.

THE COURT: You heard the Court's ruling. That's it.

MR. COHEN: May I have it marked for identification?

THE COURT: Yes. Mark it for identification,

by all means.

xx (Defendant's Exhibit B marked for identification.)

THE COURT: What is a Chinese finger, Mr. Witness? You tell us in your own way.

THE WITNESS: A Chinese finger is a device you put on a wire. When you put it on it and you pull on it, it would get tight and that's used to keep one wire hooked up to another.

THE COURT: All right, next question.

BY MR. COHEN:

Q According to the testimony you gave on your deposition, the end of the closer cable, after it was removed from the closer winch drum, was secured to the tugger cable by means of a Chinese finger; is that correct?

A I believe so.

Q That means that one end of one of those two cables was inserted into the open part of the Chinese finger; is that right?

MR. DANAHAR: Your Honor, I object to Mr. Cohen putting this exhibit in his hand, which is not in evidence, and then asking questions and then using his hand, pointing to the exhibit, when it's not an exhibit.

THE COURT: Objection sustained. Put it away.

Q Does the Chinese finger have an opening at one end into which a cable can be inserted so that it's pulled tight?

A Yes, sir.

Q And at the other end does a Chinese finger have a loop into which another cable can be secured?

A Yes, sir.

Q Is that the way in which these two cables were secured that morning, by means of a Chinese finger?

A I believe so, sir.

Q Which of the two cables, the closing cable or the tugger cable, went into the open part of the Chinese finger?

A The closing cable.

Q That closing cable was about an inch and a half in diameter, I believe you said?

A Yes, sir.

Q That meant that the Chinese finger had to be large enough to accommodate that size cable; is that right?

A Yes, sir.

Q Now, after the tugger cable was then connected to the other end of the Chinese finger, was it then necessary for the first time in that entire operation to start the tugger winch?

A Yes, sir.

Q Who was in the cab with you at the time you connected the Chinese finger?

A I imagine that --

THE COURT: No. That's where the trouble comes in. I have told you over and over again if you don't remember, say you don't remember, if that's your sworn testimony.

A I don't remember.

Q Was anybody else in the cab with you at the time you attached the Chinese finger?

A Yes.

Q How many men does it take to attach the Chinese finger?

A Two.

Q You don't recall who assisted you on this?

THE COURT: He said no, he doesn't recall. Next question.

Q Now, it was necessary for that end of the closer cable to be transported all the way down to the deck of the scow so it could be reversed on to the bucket; is that right?

A Yes, sir.

Q About how long a distance would that be?

A From the drum up to the boom down to the --

Q Right.

THE COURT: Let's get it clear. Don't say "right" before he is finished. Please make your question a little bit more expansive, will you?

Q From the drum in the cab down to the scow where the clam shell bucket lay, how much distance would have to be traversed by that wire?

A 200 feet.

THE COURT: 200 feet. All right, there is his answer.

Q So that meant that there had to be at least 200 feet of cable on the tugger winch to go along with that; is that correct?

A Yes, sir.

Q Did you operate the tugger winch while the end of the closing cable was travelling along to the scow?

A Yes, sir.

Q At that time were there still a couple of men on the scow pulling down the closing cable as it came in?

A Yes, sir.

Q They would have to pull it down and coil it up or slake it about on the deck, is that right, of the scow?

A Yes, sir.

Q At that time was the operator still in the operator's cab?

A No.

Q Were you able to see where the operator was?

A No.

Q You don't know where he was?

A Yes.

Q Is that right? He might have been in the cab?

THE COURT: Wait a minute. You don't know where he was at that time?

THE WITNESS: No, sir.

THE COURT: He doesn't know where he was at that time.

Q You didn't see him. He might have been in the cab or elsewhere?

MR. DANAHAR: Objection.

THE COURT: No"mights." Objection sustained.

Q Is it a fact that you didn't see the operator?

A Yes, sir.

MR. DANAHAR: He said so.

THE COURT: He said he did not see the operator.

Q Where was your brother Bruce at that time?

THE COURT: At what time?

Q At that time as you were operating the tugger

winch cable letting out on this closing wire with the tugger wire attached to it.

A I can't recall, sir.

THE COURT: Next question.

Q To operate that tugger winch, you merely have to manipulate that lever in one direction or another; is that correct?

A Yes, sir.

Q If you put it forward in the forward direction, which way does the winch drum rotate?

A I can't recall, sir.

Q If you put it in the aft direction, it would rotate in the reverse direction?

A I can't recall.

Q Whatever way it was, it would go forward in one direction and aft in the other direction; is that right?

A Yes.

Q When it's left in the middle, that's in neutral, it's in a stopped position; is that right?

A Yes, sir.

Q Does that lever also control the speed at which the drum rotates?

A Yes, sir.

Q So that the further you push it forward, the

faster it will go in the direction it's moving?

A I can't recall, sir.

Q Is that the way the speed operates, the further it's pushed off-center the faster it will go?

MR. DANAHAR: Your Honor, he just said he can't recall.

THE COURT: This is an important question. He has a right not to give up when he gets an answer. He has a right under certain circumstances to press. After all, this witness did have some experience with it and he may not remember it, but counsel has a right to try to see whether he absolutely has no memory.

Now, you take that lever.

THE WITNESS: Yes, sir.

THE COURT: You demonstrated it to this jury by using the ruler; is that right?

THE WITNESS: Yes.

THE COURT: What do you best remember, when you pushed it forward, if you pushed it the whole distance forward, did it go faster than when you pushed it only half-way forward?

THE WITNESS: Your Honor, may I put it this way?

THE COURT: Sure.

THE WITNESS: Depending if you had weight on it

or not. If you had weight on it, it wouldn't make no difference if you had it all the way in or out. It was an air compressor. If it was slack, yes.

THE COURT: Yes, what?

THE WITNESS: Yes, sir.

THE COURT: If it was slack?

THE WITNESS: She will go faster.

18 THE COURT: She will go faster?

THE WITNESS: Yes, sir.

THE COURT: So, you see, you try and you get it.

MR. COHEN: Thanks, too, your Honor.

THE COURT: I mean, what harm is there? Try it, you'll like it.

Short recess.

(Recess.)

(Jury absent.)

THE COURT: Call Mr. Ducey.

MR. DANAHAR: Mr. Ducey.

THE COURT: Mr. Ducey, Mr. Danhar is doing his best to present the case for his client. As you know, the client is now being cross-examined by the other side. The jury can't hear two people at one time. We cannot call you until the other witness has been finished with his testimony, and I don't know how long Mr. Cohen is

going to take with the examination of the plaintiff. Do you understand what I am saying?

MR. DUCEY: Yes, sir.

THE COURT: Mr. Danahar is worried about you and your time and all that. He said, "Judge, will you excuse him so he doesn't have to wait around here for another hour or two? He may not be called today." I said, "I will oblige you." You are directed to appear here tomorrow morning as a witness in this case and to be here promptly at 10 o'clock. Do you understand what I said?

MR. DUCEY: Yes, sir.

THE COURT: To fail to obey the Judge's order, which I don't think has ever happened in my court, will result in contempt of court. I must tell you so that a witness doesn't say, "I didn't know." I am telling you the whole story. Be here tomorrow morning at 10. If you are not, you are in contempt of court.

MR. DUCEY: Thank you, your Honor.

THE COURT: All right, call the jury.

(Jury present.)

THE COURT: Mr. Anderson, won't you please take the stand again.

Mr. Cohen, will you please resume.

MICHAEL T. ANDERSON, resumed.

CROSS EXAMINATION CONTINUED

BY MR. COHEN:

Q Mr. Anderson, I believe we were at the point where you just finished explaining that insofar as the tugger winch is concerned, when there is a strain on it, that the speed is pretty much set; it cannot be changed; is that right?

A Yes, sir.

Q Where there is no strain on the tugger winch, then by your moving the handle further in the direction you want to move it in you can increase the speed; is that right?

A Sometimes, sir.

Q Now, when you were letting out the closing cable with the Chinese finger and tugger cable attached, was that an instance where that was a strain on the tugger winch or not?

A No strain.

Q So that was the slack period?

A Yes, sir.

Q You could control the speed of the tugger winch by the manner in which you moved the handles; is that right?

A On that particular day?

Q Yes.

THE COURT: Yes, sir. If you remember.

A I'm not sure, sir.

Q Now, is it necessary to keep that handle in the position by keeping your hand on top of it all the time? What I am driving atis, ifyou take your hand off, will it stay in the position it's in or will it come back to the neutral position?

A Sometimes, sir.

Q On that day -- how does it work? Do you have to keep your hand on it to keep it in the position you want?

A On that day?

Q Yes.

A I can't recall.

Q There came a point when all of the closer cable was down on to the scow; is that correct?

A Yes, sir.

Q How did you know when that point had been reached?

A Somebody told me.

Q Who told you?

A I don't know.

Q How did they communicate with you?

A All your wire is out, that's when you know.

Q All your tugger winch wire is out?

A Yes.

Q You said somebody told you. My question to you is, who told you and how did they tell you?

A I can't recall, sir.

Q Was there a public address system aboard this derrick?

THE COURT: Do you know what is meant by a public address system?

THE WITNESS: Yes, sir.

THE COURT: Was there one on that day, October 18, 1970?

THE WITNESS: In that confined area?

MR. COHEN: On the dredge.

THE COURT: On the dredge.

THE WITNESS: On the dredge, yes.

Q That's the way, through a public address system, that the operator could give orders or instructions to the men about the dredge; is that right?

A It depends where they are standing, sir.

Q It depends upon whether he is using the system or not; correct?

A No, sir.

Q How far did you let out the tugger winch wire?

A All the way.

Q All the way?

A Yes.

Q That meant that just the bigger end of it was secured to the tugger winch drum; is that correct?

A Yes.

Q At that time what was the next step that had to be done in this operation of reversing the wire?

A On that particular --

THE COURT: Only on that day.

A On that day. We disconnected the tugger wire from the bigger wire -- from the closing wire.

Q May I interrupt you to do this a step at a time. That was done on the scow; is that correct?

A Yes, sir.

Q Because by this point in the operation the bigger wire, the closer wire and the tugger wire are now both on the scow?

A Yes, sir.

Q Did you go on to the scow to disconnect that Chinese finger?

A I believe so.

Q So you left the cab; is that correct?

A Yes.

Q When you left the cab, was there anybody behind who remained in the cab?

A No, sir.

Q When you left the cab were you the only one who was in the cab at the time?

A I can't recall, sir.

Q When you went on the scow to remove the Chinese finger, who else was on the scow?

A I can't recall, sir.

Q Was anybody else on the scow?

A Definitely, yes.

Q What else was going on on the scow at the time that you went there to remove the Chinese finger?

A I can't recall.

Q After you removed the Chinese finger on the scow, what did you yourself then do next?

A Would you repeat that, please?

Q Yes.

After you went on the scow and removed the Chinese finger from the tugger winch cable and the closing cable, what did you yourself next do?

A I'm not sure if I disconnected that wire from

the closing cable.

Q Are you sure that you went on the scow?

A Yes, sir.

Q What did you do on the scow?

A Assist in the process.

Q Well, specifically what did you do?

A What did I do?

Q Yes.

A I can't recall.

THE COURT: All right, that's your answer. Next question.

Q What did you see others do while you were on the scow at that time?

A I don't remember.

Q How long did you stay on the scow before going elsewhere?

A I can't recall.

Q Who told you to leave the scow, if anybody?

A We all left.

Q Everybody left?

A Yes.

Q My question wasn't how many left. My question was, who told you to leave the scow.

A Nobody.

Q Did you decide on your own when to leave?

A We all left.

Q Did you decide for yourself when it was time to leave?

A No, sir.

Q Did somebody tell you when it was time to leave?

A We all --

THE COURT: Go ahead.

A (Continuing) We all left at the same time.

Q Where did you go when you left?

A We all went and had coffee.

Q What time was this that you went and had coffee?

A I can't recall.

Q Was this a coffee break that you were on?

A Yes, sir.

Q In the middle of the morning some time?

A Yes, sir.

Q After you finished coffee, where did you go?

A I went back up to the cab.

Q Had you worked on the scow, whatever had to be done on the scow, had that been completed by that time?

A I believe so, yes.

Q When you went back into the cab, did somebody

tell you to go back into the cab?

A Yes, sir.

Q Who told you?

A I'm not sure, sir.

Q Who do you normally take orders from?

A Artie Ramos or Eddie Ducey.

Q Was it one of those gentlemen who told you following the coffee break to go back into the cab?

A I believe so, yes.

Q Exactly what did he say to you?

A "We are going to take up on the wire now."

19 Q Did he tell you to go into the cab?

A Yes, sir.

Q What did he say when he said to you to -- how did he say it?

MR. DANAHAR: Your Honor, he just answered that question, I think. This is just repetition.

THE COURT: Do you remember how he put it to you on that day, Mr. Anderson?

THE WITNESS: No, sir.

THE COURT: But he told you in substance to go into the cab; right?

THE WITNESS: Yes, sir.

THE COURT: All right, next question.

Q Be it Mr. Ramos or Mr. Ducev, did youhear that person give orders or instructions to any of the other men?

A No, sir.

Q Did anybody go into the cab with you?

A No.

Q You testified earlier in answer to Mr. Danahar's question that somebody told your brother to go somewhere to get ready for some painting work.

A That isn't in the cab.

Q I know it's not in the cab. Isn't that what you testified to earlier today?

A Yes, sir.

Q When did you hear somebody tell that to your brother?

A While we were having coffee. I can't recall what time.

THE COURT: Say so, that you don't remember when, but you do remember someone telling your brother something?

THE WITNESS: Yes.

THE COURT: What did they say to your brother, the substance, that same day, that same morning?

THE WITNESS: The substance was to go paint.

THE COURT: To go paint?

THE WITNESS: Yes.

THE COURT: All right, there it is.

Now, do you remember this distinctly? You have no doubt about this, that after the coffee break --

THE WITNESS: Yes, sir.

THE COURT: -- you were told to go into the cab?

THE WITNESS: Yes, sir.

THE COURT: You went into the cab and on that occasion you were the only one who went into the cab; is that what you are saying?

THE WITNESS: Yes, sir.

THE COURT: Next question.

Q Mr. Anderson, perhaps I misunderstood you earlier, but let me see. Didn't you just say a few moments ago that you didn't hear any other individual receive any orders?

A At what time, sir?

Q When you were told following the coffee break to go into the cab.

A Yes, sir. After the coffee break.

THE COURT: He said he doesn't remember what time his brother was told to go paint.

THE WITNESS: It might have been during the coffee

break.

THE COURT: Next question.

Q I'm sorry, you said it might have been what?

A During.

THE COURT: When we get into might have been, strike that. I'm not going to waste my time with that. I will give you all the time that's necessary, but not waste it.

THE WITNESS: Yes, sir.

THE COURT: Next question.

Q Did you know when you went up into the cab that there was no one else going up with you?

A No.

Q Did you expect somebody else to be going up with you?

A Indeed.

Q After nobody else came up, did you talk to anybody about that?

A No, sir.

Q Did you, who expected to have somebody else coming up into the cab, did you go to find the mate and say, "Where are the other two men"?

A That's my job. Somebody tells you to do something, you did it.

Q Did you go to the mate and say, "Where are the other two men"?

A No, sir.

Q Did you go to the operator and say, "Hey, this is a three-man job; where are the other two men"?

THE WITNESS: May I answer that?

Q Could you answer that yes or no, please?

A No, sir.

Q Did you go to the captain and say, "Hey, this is a three-man job and I am here all alone; where are the other two men"?

A No, sir.

Q When you are working with a winch -- and the tugger winch is just one form of winch; is that right?

A Yes.

Q When you are working with a winch, isn't it your responsibility to see to it that you don't get caught in the moving wire?

A Yes.

Q Isn't one of the fundamental safety roles that you are not to put your hands on a moving wire that's going into a winch?

A No, sir.

Q Approximately how many feet of wire make up a

turn on the tugger winch?

THE COURT: If you know.

A I can't recall. I don't know.

Q By looking at the tugger winch in these photographs, you can see its size and you can approximate how many feet of wire are consumed in one turn?

A I could approximate it, yes.

Q Please do.

A A foot to --

MR. DANAHAR: If your Honor please, may he look at the photograph and then answer?

THE COURT: Sure. Certainly the witness -- you have a memory of the job?

THE WITNESS: Yes, sir.

THE COURT: What would you say, how much length of wire would it take to make one revolution, that means to go around the drum once?

THE WITNESS: 18 inches.

THE COURT: 18 inches?

THE WITNESS: Yes.

THE COURT: Very good. That's his answer.

Q At the time of your accident there were, I think you said, about three turns of wire on that tugger winch; is that correct?

A Yes, sir.

Q That would be about 54 inches.

You have estimated before that the entire amount of cable that had been on that tugger winch was about 200 feet; is that right?

A Approximately, yes.

Q So there was quite a bit yet to be taken in on that tugger winch?

THE COURT: At the time of your accident; is that right?

Q At the time of your accident.

THE COURT: You had just begun?

THE WITNESS: Yes, your Honor.

THE COURT: And there was quite a bit of cable--

THE WITNESS: No.

THE COURT: Explain that to me.

THE WITNESS: They were reeving the bucket at the same time they were pulling that cable up. To reeve that bucket, you are using approximately 45 feet or more just to reeve the bucket.

THE COURT: What do you mean by reeve the bucket?

THE WITNESS: You run the wire through the bucket, through the shift and back. That's reeving. We were

reeving the bucket plus pulling the wire all at the same time, your Honor.

THE COURT: I see. There it is.

Q In order to complete the reversal of that closer cable wire, you had to get the end of it back down on to this closer cable drum and re-secure it to that drum; is that right?

THE COURT: Do you understand it?

THE WITNESS: No. Can you rephrase that?

THE COURT: Yes, rephrase it, and I will strike those questions. You must make it clearer. Go ahead.

Q The end of the closer cable that had been attached to the bucket was as a result of the job you were doing now supposed to come down and be attached to the closer cable drum?

A Yes, sir.

Q Until that end was attached to the closer cable drum, the job wouldn't be complete, would it?

A Right, sir.

Q That end that was now coming down to be attached to the closer cable drum was connected to the tugger winch cable that you were taking in on the tugger winch; is that right?

A Yes, sir.

Q And it was connected to the end of the tugger winch cable?

A Yes, sir.

Q The tugger winch cable in its entirety was about 200 feet, you said before?

A Yes, sir.

Q Three turns, or approximately 54 inches, or 4-1/2 feet were around the tugger winch drum at the time of your accident?

A Yes, sir.

Q So there remained quite a bit more of tugger winch cable to be taken in before the end of the closing cable would be down in a position near the closing drum?

A Yes, sir.

Q Now, you testified this morning -- your Honor, may I use that substitute winch?

THE COURT: You may use anything except the jury and the Judge.

MR. COHEN: I hope to use them for a different purpose, sir.

THE COURT: Let the record show that Mr. Cohen is using the jury drum that was used earlier for demonstration purposes. Go ahead.

MR. COHEN: I am looking for the wire that was

used before.

THE COURT: Give him the wire that was used before. Oh, have you got a wire there?

MR. COHEN: I have got a piece of string. It will do the same job.

Q Would you please come here, Mr. Anderson?

THE COURT: Would you please step down, Mr. Anderson.

Q If that be the forward part of the -- and I am pointing now to the wall on the righthand side of the courtroom as we face the Judge. If we consider that wall where the wall is to be the forward wall of the cabin so that it would be -- actually the tugger winch is right next to that wall, okay?

THE COURT: Instead of reserving that thing for an expert witness, I am going to have to protest.

MR. COHEN: I just want to set up --

THE COURT: Don't set up anything. Use the simplest demonstration possible. Reduce it to its minimum.

Q The front wall of that cab was about an inch away from that winch; is that correct?

A Or more, yes.

Q If we consider the front wall to be over here, could you please arrange this rope around this jury

selector and let that represent the tugger winch cable. Do you understand?

A So far, yes.

Q Now, the handle for the tugger winch was to the right? That's the lever to operate it was to the right as you face forward; am I correct so far?

A Yes, sir.

Q This tugger winch wire went out and was connected to the Chinese finger and the closer cable: is that right?

A It ran through a --

THE COURT: Mr. Cohen, I have great respect for both of you on both sides, but look what you are doing. You have got your back to the jury and he has his back to the jury. They can't see your movements. If you want to demonstrate, please go on that side and let the jury see your faces and your movements. Please. I don't know what you have got in mind, but if you want the jury to see and understand you must do it like that.

MR. COHEN: We can use this table over here, your Honor?

THE COURT: Yes. Do anything you wish, but make it possible for the jury to see.

Q I just want to orient the courtroom to the cab,

if I may, Mr. Anderson. The handle to control this tugger winch would be on the righthand side as you face forward; is that correct?

A Yes, sir.

Q And the door that you talked about that led out of the cab would have been to your left over in that direction; is that correct?

A Yes, sir.

Q Now, your position as you were working with this tugger winch at the time of the accident was such that your back was to that door, am I right?

A Yes, sir.

Q And your right arm was controlling the lever of the tugger winch; is that correct?

A Not quite, sir.

Q Did you have your right arm on the lever of the tugger winch?

MR. DANAHAR: Your Honor, I wish Mr. Cohen would let the witness complete his answer.

THE COURT: Objection sustained.

MR. COHEN: I thought he did.

A My back wasn't toward the door. I was more or less facing the front of the cab in this position, this position I am in right now.

THE COURT: I am going to insist. Your backs are still to the jury. You will have to reverse your direction. Just create it the other way so the jury will see the movements. You can't use thatwall of the courtroom. Just tell them to imagine something else.

MR. COHEN: I wanted the jury to view this from looking into the winch, not from the other side where they would be blocked. If his back would be to them, I'm sorry, but I just would like them to see the position of his body, if your Honor please.

THE COURT: Sure. That's important.

MR. COHEN: I mean no disrespect of the jury by having anybody turn their back to them.

THE COURT: Mr. Cohen, of course not. For heaven's sake, let'snot get into that. We are wasting time with that stuff. Of course not. But you are all involved in what you want to demonstrate and you are not aware that you are doing it in a way that cannot be followed. There is nothing unusual about that. That goes with brilliant people as well as dummies. All right, now,come on.

Q Mr. Anderson, could you put --

THE COURT: I didn't say which one you were. All right, Mr. Cohen.

Off the record.

(Discussion off the record.)

Q Mr. Anderson, could you please take the position that you had with respect to the tugger winch. Put your right arm on what represents the handle and show us how your body was.

A Exactly like this.

Q Your right hand crossing over the wire; is that correct?

A Yes.

Q Could you put your hand, please, on that part of the thing. Right.

Now, you have yourself -- if you would please hold that position, I would like to describe it for the record.

As you have yourself in this position, you are facing toward the front of the cab with your body, your right hand is over the tugger winch cable and is on the lever and your left side is toward the door that was on the left side of the cab as you now stand. Could you please retain that position?

THE COURT: Is that right?

THE WITNESS: I am trying to answer, but he tells me to stay this way.

THE COURT: What's your answer?

THE WITNESS: Yes.

Q Now, you said that you were at the same time patting the tugger winch cable, is that correct, with your left hand?

A Yes, sir.

Q Could you show us how you were doing that?

A Can I lower it? Can you put it on a chair?

Q Absolutely.

THE COURT: That's it, you do whatever you want in order to demonstrate it.

A All right, it's about that high. Would you stand over here?

Q You want me to hold the string?

A Yes.

MR. DANAHAR: Your Honor, may we note for the record that the tugger winch is wider than this particular box? You know, I think I gave you the dimensions. It's about -- I think it's 24 inches.

THE COURT: 24 or something like that.

MR. COHEN: We have all the dimensions on the photograph, your Honor. There are a number of demonstrations that Mr. Danahar put on this way.

THE COURT: Go ahead, Mr. Cohen.

Q Now --

A What do you want me to do?

Q I would like you, please, to take the position you were in at the time of the accident with your right hand on the lever of the tugger winch and you said with your left hand --

A I was tapping it.

Q You were tapping it?

A Yes.

Q That means physically putting your left hand in contact against the moving wire; is that correct?

A Yes, sir.

Q And your left hand had a glove on as did your right?

A Yes, sir.

Q And your body at that time was still facing toward the front; is that correct?

A Yes, sir.

THE COURT: Place your body now in the position that you were in the instant before the accident.

THE WITNESS: Your Honor, I am not sure.

THE COURT: That's all right. Just say so. You are not sure about what?

THE WITNESS: Like this.

THE COURT: What are you not sure about?

THE WITNESS: Quite the position. I know what side I was standing on -- I know what side I was using, but --

THE COURT: Exactly the way you stood; is that what you mean?

THE WITNESS: Yes.

THE COURT: But you were tapping the wire?

THE WITNESS: Yes.

THE COURT: Show the jury how you were tapping the wire.

Where was your hand while you were tapping the wire?

THE WITNESS: On the lever.

THE COURT: Could the jury see that?

Q At that time was your left side toward the left door?

A I am not sure.

MR. DANAHAR: Your Honor, he testified already he was not sure how he was standing.

THE COURT: All right, there it is, Mr. Cohen.

Q As you were doing that, was there slack or strain on the winch drum of the tugger winch?

THE COURT: As you were doing what?

MR. COHEN: Tapping the wire at the time this

accident happened.

THE COURT: Then say so.

THE WITNESS: Your Honor, may I explain?

THE COURT: Yes.

THE WITNESS: Now, all the wire is out and they reeve the tucket and they have got all the slack on the opposite side of the bucket after they reeve it. Now, the wire is not tight, but it's tense.

THE COURT: Yes.

THE WITNESS: It's like this, it's loose. Okay?

THE COURT: Okay.

THE WITNESS: When the wire starts to come through the bucket, the wire gets very tight and then -- okay?

THE COURT: What else were you going to say, then what?

THE WITNESS: That's it.

Q Now, can you answer me, please, at the time this accident happened, was this a strain on the drum of the winch or not?

A No.

Q About how far away from you was that door to your left, approximately?

A From the --

Q From where you were standing, how far away was that door to the left?

A 7 feet.

Q 7 feet.

A Approximately.

MR. COHEN: I think he can return to the stand now, your Honor.

THE COURT: Good.

Q Mr. Anderson, your testimony this morning was that as you tapped the tugger winch cable which was moving on to the drum of the winch -- let me rephrase the question. I am getting too complicated.

At the time of your accident, the winch was rotating in the fashion to take the tugger winch cable back on to itself; is that right?

A Yes, sir.

Q That means that the direction that the cable was taking was one into the winch or on to the winch; is that correct?

A That's correct.

Q Your testimony this morning was that as you were tapping that wire with your left hand, it got caught and you were pulled into the winch; is that what you said?

A I believe so, yes.

Q You believe so?

A Yes.

Q Do you have any doubts about it?

A No.

Q If you were doing the same work as you say you were when this accident happened and if there was a man at the door 7 feet away, would that man at the door 7 feet away have in any way prevented you from getting caught on this wire?

THE COURT: That's argumentative. Next question.

MR. DANAHAR: Objection, your Honor.

THE COURT: I'm sorry, sir. I'm sorry.

MR. COHEN: May I try it in another fashion?

THE COURT: Yes, you may argue.

MR. COHEN: I don't want to argue. May I try the question in another way?

THE COURT: Sure, try it another way.

MR. COHEN: I will try another question.

Q Your claim here is that there should have been three men in the cab doing the work that was going on, if I understand you correctly; is that right?

THE COURT: At that time.

Q At that time.

A Yes, sir.

Q Your claim is that one man should have stood by the tugger winch and just worked the lever; is that correct?

A Correct.

MR. DANAHAR: Your Honor, I object to the form of the question. It's not just his claim, it's his testimony.

THE COURT: All right. Objection sustained. Reframe your question. You can't go on on end.

Is it your testimony --

MR. COHEN: All right, your Honor.

Q Is it your testimony that one man should have been assigned just to stand at the tugger winch and operate the handle?

A Yes.

Q That tugger winch merely has to go now in one direction until almost all of the 200 feet is back down there in the cab; isn't that right?

A Yes.

Q So, all that man would have to do is to stand there and hold that handle in the position that makes the drum take up in that direction; is that right?

MR. DANAHAR: Objection, your Honor.

THE COURT: On what ground?

MR. DANAHAR: It's argumentative. It's --

THE COURT: Objection sustained.

Q Would that man have anything else to do but to hold the handle in that position until the 200 feet of wire came into the cab?

A Yes.

Q What else would he be doing?

A Watch the man at the door.

Q Watch the man at the door?

A Yes.

THE COURT: For signals, right?

THE WITNESS: Yes, sir.

Q You said that the second man should be on the lefthand side of the tugger winch wire guiding it with his hand as you were doing?

A I did not say that. May I explain?

Q All right, where did you --

THE COURT: What did you say?

Q Where did you say the second man should have been?

THE COURT: I'm sorry, Mr. Cohen. He asked, "May I explain," and that's within my power to say yes or no, and I am saying yes. Go ahead. What do you want to say?

THE WITNESS: In the beginning the wire is slack. Like I said, there is no tension. The man guides it with his hand to keep it in position and then when it gets tight, I even said it, he used a pinch bar because the wire is too tight and it will not run back and forth.

THE COURT: All right. That's what he maintains was the position and the requirements of the man who was putting the cable on that drum; is that what you are saying?

THE WITNESS: Yes, sir.

THE COURT: It is your sworn testimony that that takes the effort of one man?

THE WITNESS: Yes, sir.

THE COURT: And that that one man doing that with regard to the drum cannot work the lever; is that what you are saying?

THE WITNESS: Yes, sir.

THE COURT: Next question.

Q At the time of your accident, you said that it was slack on the drum, there was no strain; isn't that true?

MR. DANAHAR: I object to that, your Honor.

A I said it was --

THE COURT: Hold on. Go ahead and answer.

A I said it was tense.

Q Tense?

THE COURT: That's right.

A Yes.

Q When it's tense, isn't that the time that you use the pinch bar?

A No.

Q When do you use the pinch bar?

A When she is tight.

Q There is a difference between tense and tight?

A You have to look that up in the dictionary.

Q Now, the second man that you say should have been there would have been on the lefthand side of the tugger winch cable and his function would have been to guide it with his hand?

A In the beginning, yes, sir.

Q Well, at the time your accident happened it was in the beginning, wasn't it?

A Yes, sir.

Q I am only talking about in the beginning. All right, you say in the beginning there should have been a second man there on the lefthand side guiding it with his hand; is that right?

A Yes, sir.

Q Now, I would like you to assume that you were that man --

THE COURT: I'm sorry. Start it again.

Q Mr. Anderson, if there were three men in the cab, as you say, one at the door,one to the righthand side of the tugger winch cable working the handle, and you as the third man on the lefthand side guiding the cable with your hand, if your hand got caught in that cable and you were pulled into the winch, the fact that there was a man at the door and a man at the lever would have made no difference, would it?

MR. DANAHAR: I object to that, your Honor.

THE COURT: I am going to let the witness answer. Objection overruled. What's the answer?

Do you have the question?

THE WITNESS: Yes, sir.

THE COURT: What's your answer?

THE WITNESS: I said it would have made a difference.

THE COURT: Explain it to the jury, what you mean.

A Each man is doing one job. The man running the tugger is watching the guy by the door and he is also paying attention to that guy tapping that wire. Now, when that man is running that tugger, another man is guiding it, and

he knows exactly what that man is doing. Now, if his hand would have got caught that man could have stopped it like that.

THE COURT: Are you finished?

THE WITNESS: No.

THE COURT: Go ahead.

THE WITNESS: If he couldn't have stopped it, he would have at least stopped it before the man got his hand wrapped around it.

THE COURT: Are you finished?

THE WITNESS: Yes.

THE COURT: That's his answer.

You want that stricken?

MR. DANAHAR: No, your Honor.

THE COURT: All right.

22 Q When you are doing both the guiding of the wire with your left hand and the controlling of the winch with your right hand, you know immediately when your left hand gets caught, do you not?

A No.

MR. DANAHAR: Objection, your Honor.

Q Would you know faster than another man when your left hand is caught?

A Yes.

Q Knowing faster than some other man when your left hand is caught, you would be first or faster to turn off the winch with your right hand, would you not?

A No.

MR. DANAHAR: Objection, your Honor. This is --

THE COURT: No. He says no.

Q Now, you testified this morning in answer to questions of Mr. Danahar -- by the way, before we get into that, you mentioned the term "pinch bar" before. What is a pinch bar, could you explain that to the jury, please?

THE WITNESS: Your Honor, may I use your wires you used in this particular instance?

THE COURT: No. He just wants to know what a pinch bar is.

A A pinch bar is a bar with a point on one end and a fork on the other, more or less.

THE COURT: There you are. That's the answer. Next question.

Q You used that bar to guide the winch wire on to the drum of the winch whenever it needs guidance; isn't that so?

MR. DANAHAR: Objection, your Honor.

THE COURT: How do you use it in connection with that cable and the drum? Now you show it.

THE WITNESS: Okay. The wire is tight, so the man will get the pinch bar, put it on the deck, on an angle where he could guide the wire back and forth without it getting piled up on one side.

THE COURT: I see, so that the fork of the pinch bar supports the cable as it goes around the pinch bar; is that what you mean?

THE WITNESS: Not the fork itself, more or less the bar.

THE COURT: The bar?

THE WITNESS: Say this is the wire.

THE COURT: Yes.

THE WITNESS: The bar would be put down on the deck like that and it would be guided back and forth.

THE COURT: I see. He demonstrates that with a pen and a pencil. All right.

Q So that when the pinch bar is used, the man's hand does not come in contact with the moving wire, it's the bar that comes in contact with it; is that right?

A Yes.

Q Isn't that because you are not supposed to put your hand in contact with a moving wire that's going into a winch?

MR. DANAHAR: Objection, your Honor.

THE COURT: I will allow the witness to answer. Objection overruled.

What's your answer?

THE WITNESS: Would you mind repeating that, please?

THE COURT: Surely.

Mr. Court Reporter, would you show how good you are by repeating the question.

(Question read.)

A No.

Q Now, you mentioned this morning to Mr. Danahar that you thought your hand got caught on a fish hook on the moving wire?

A Yes, sir.

Q Did you see any such fish hook?

A No, sir.

Q Did you ever testify or tell anyone that you didn't know what happened at the time of your accident?

A Yes, sir.

Q When did you testify or tell anyone that you didn't know what happened at the time of the accident?

THE WITNESS: Your Honor, may I?

THE COURT: No. He has a right to that question and he has a right to an answer.

When?

Q Two months ago.

At that time were you telling the truth when you said you didn't know what happened at the time of the accident?

THE WITNESS: Your Honor, may I interrupt?

THE COURT: No. He asked at that time when you said that were you telling the truth. The rest of it will be explained in due time. Right now he wants to know when you gave that answer two months ago, were you telling the truth.

THE WITNESS: Your Honor, I have to explain this.

THE COURT: Go ahead.

MR. COHEN: If your Honor please --

THE COURT: I am going to allow it.

A At that hearing --

THE COURT: At the hearing, yes.

THE WITNESS: The man who was asking the questions -- you know, he was asking me so many questions -- it was the first time and I was nervous and he asked me that question maybe a hundred times and maybe twice I told him I wasn't sure.

THE COURT: And the other times?

THE WITNESS: I told him I was sure.

THE COURT: Go ahead. This is his answer.

Q Did you testify or tell anyone at any prior date that there were no fish hooks; that you could not say that there were any fish hooks on this wire that could have caught your hand?

A Yes.

THE COURT: Did you say it?

THE WITNESS: I didn't know if there was any, yes.

THE COURT: He so testified, he said.

Q Isn't it true that today you still don't know if there were any?

A That's right.

THE COURT: What makes you say there was a fish hook? On what doyou base that? You see, today you told us --

THE WITNESS: There could have been.

THE COURT: I don't care about --

MR. COHEN: If your Honor please, I would like to make a motion to strike that testimony that he gave earlier today since it's based on what could have been.

THE COURT: Sir, will you give me a chance to have this thoroughly explored? That's all I care about. I don't care who is going where. All I want is thatthese

people should know what is the testimony. That's my job here. That's all I care about.

Now, listen. This morning I remember distinctly because I think I asked that question myself --

THE WITNESS: Yes, sir.

THE COURT: When I was demonstrating it. Do you remember?

THE WITNESS: Yes, sir.

THE COURT: It was with the drum. I asked you what happened and you said something to the effect that while you were feeding --

THE WITNESS: The wire.

THE COURT: The wire, meaning the cable your hand got caught on to, your finger, to a fish hook in the cable.

THE WITNESS: Yes, sir.

THE COURT: And before you knew it your hand was pulled right into the drum; right?

THE WITNESS: Yes, sir.

THE COURT: What makes you say that there was a fish hook? What do you base that on? You didn't see it with your eyes, did you? Did you see it with your eyes?

THE WITNESS: No, sir.

THE COURT: All right, so how do you know it

was a fish hook?

THE WITNESS: Because my hand got caught.

THE COURT: So you felt it; is that what you mean?

THE WITNESS: I felt my hand being pulled.

THE COURT: But how do you know it was pulled because of a fish hook?

THE WITNESS: I believe there was no other reason?

THE COURT: I see. So you deduced -- you figured it out that way, that it could not have been any other reason, it must have been a fish hook; is that what you mean?

THE WITNESS: Yes, sir.

THE COURT: But actually that's the sole reason for your saying there was a fish hook?

THE WITNESS: My hand got caught and it was pulled.

THE COURT: Couldn't it have been pulled without a fish hook?

THE WITNESS: No.

THE COURT: So you figure in your mind that it must have been a fish hook?

THE WITNESS: Yes, sir.

THE COURT: But actually you didn't either feel

or see a fish hook, am I right?

THE WITNESS: Your Honor, I said something caught my hand andpulled it. The only thing I could imagine it could be was a fish hook.

THE COURT: All right, we have his answer. That's his answer.

MR. COHEN: May I renew my motion, your Honor?

THE COURT: After you are through developing the entire testimony with regard to it. He may have said something that -- you have got to bear in mind that the development of testimony, which you know as well as I do, has a great deal to do with the ability of the witness to express himself. We can't get witnesses made to order in the sense that they have the ability to employ the language which will best express what they want to utter and our function is to take the halt, those who have difficulty, and we have got to be patient enough to stay with it until we extract what it is they wish to convey. It may take 20 times as long, but that's the only way. With such a witness, at first blush, an answer looks one way and pursuing it a little further, the answer takes on a different complexion. So, if you will bear with an impatient judge who is trying to exercise patience with a witness who concededly has limited powers of expression, which

is not that to which he is accustomed, any more than I am accustomed to handling the tools with which he is familiar. If we will bear that in mind, then the Court will have a much clearer picture on which to predicate a ruling as to whether or not his testimony as to the fish hook stands or should be stricken.

Thank you for your attention.

MR. COHEN: Yes, sir.

May I, your Honor, read to the plaintiff some of the testimony, and to the jury, some of the testimony he gave under oath on December 13, 1973?

THE COURT: Certainly.

Q I would like to read a section of it and then I will ask you, Mr. Anderson, whether --

THE COURT: Is it necessary to ask him? You have got it there. It's conceded that that's the testimony he gave.

Won't you read it slowly to the jury and let them see what it is he had to say.

MR. COHEN: I wanted to ask him if there was any part of that testimony that he didn't understand.

THE COURT: That comes after you have read it. Won't you be good enough to read everything that you intend to call to the attention of the jury and then you can ask

him piecemeal that question.

MR. COHEN: Yes. I will read from page 23.

THE COURT: Do you understand what he is doing? He is reading what he says were the answers you gave to the questions two months ago. You understand?

THE WITNESS: May I say something?

THE COURT: No.

Do you understand what he is doing?

THE WITNESS: No.

THE COURT: Do you remember you were asked questions and you gave answers two months ago?

THE WITNESS: Yes.

THE COURT: That's all taken down by a typewriter. You understand?

THE WITNESS: Yes.

THE COURT: He has got the pages of every question and every answer that you were asked on that occasion. Your lawyer knows about it because your lawyer was there.

THE WITNESS: Yes, sir, I understand that.

THE COURT: Now, what Mr. Cohen is doing now is reading parts of your total testimony 60 days ago. That's all he is doing. Do you understand that?

THE WITNESS: Yes, your Honor.

THE COURT: Well, listen carefully as he reads it to the jury and then we will give you your chance to say what you want to later. Do you understand?

THE WITNESS: Yes.

THE COURT: I just want you to know what's happening because he is going to ask you questions about it, do you see?

THE WITNESS: Yes, sir.

MR. DANAHAR: Your Honor, will I have the opportunity to read from the deposition also at this time --

THE COURT: You certainly will.

MR. DANAHAR: If it's tied in with the same subject matter?

THE COURT: You certainly will, sir.

THE COURT: Go ahead.

MR. COHEN: When he says at this time, I assume I will be able to finish my cross-examination?

THE COURT: Mr. Cohen, do I know what you are going to read?

MR. COHEN: I don't know what he has in mind, your Honor. I don't want it interrupted.

THE COURT: Take it easy. Have you faith that the Judge will not have you in the dark?

MR. COHEN: No, I have faith.

Q On page 23:

"Q How much of the wire had gone around the drum before something happened?

"A I believe it was three turns.

"Q How much?

"A About three turns.

"Q Three turns?

"A Yes, I believe.

"Q And then something happened?

"A Yes, sir.

"Q Will you tell me what happened?

"A What happened?

"Q Yes.

"A I don't know. That was it."

THE COURT: Wait a minute. Anything further on that point?

MR. COHEN: That's what I wanted to read, your Honor.

THE COURT: Do you understand what he just read?

THE WITNESS: Yes, your Honor.

THE COURT: Now, what question do you want to ask the witness?

Q Now, my question, Mr. Anderson, was there anything about any of those questions or answers that I just

read that you didn't understand?

THE WITNESS: May I?

THE COURT: Yes.

THE WITNESS: Like I said, I was -- it was the first time I ever was in front -- and I was nervous and --

Q That's not my question.

THE COURT: His question is, those questions and answers that he just got through reading, at the time they were put to you 60 days ago, was there anything about those questions that you did not understand?

THE WITNESS: No, sir.

THE COURT: They were clear to you, right?

THE WITNESS: No, sir.

THE COURT: What do you mean by that?

THE WITNESS: I understood them, but what I wanted to say maybe didn't come out. Like I said, I was nervous and scared and I didn't know, you know, what the story was.

THE COURT: All right. There is his answer. Next question.

Q Did you at a later date receive this transcript to read over and sign?

A Yes, sir.

MR. COHEN: Mr. Danahar, do you have the signed original?

THE COURT: Would it be filed with the clerk?

MR. DANAHAR: No, I have it, your Honor.

THE COURT: Have you?

MR. DANAHAR: Yes.

THE COURT: Was it signed by this witness?

MR. DANAHAR: Yes, your Honor.

THE COURT: On what date?

MR. DANAHAR: Yesterday, I think it was.

THE COURT: Yesterday?

MR. DANAHAR: Yes.

THE COURT: All right, next question.

MR. COHEN: May I just take a quick look at it, your Honor?

THE COURT: Show it to Mr. Cohen.

MR. COHEN: It should have been given back.

MR. DANAHAR: I didn't put the date on it. Should I do it now?

THE COURT: He says it was signed yesterday, but the date is not on it.

MR. COHEN: I take his word for it, Judge.

THE COURT: But he asked for permission to put the date on and I just was about to say certainly, but I didn't want to do it while you had it in your hand.

MR. COHEN: He is putting on the date, your

Honor, that he notarized the signature; is that right?

THE COURT: Is that right, Mr. Danahar?

MR. DANAHAR: I haven't actually notarized it. I didn't notarize it, but I will put my name down now.

THE COURT: Did he swear to it?

MR. DANAHAR: I didn't actually give him the oath.

THE COURT: Did he read it?

THE WITNESS: Yes.

MR. DANAHAR: Oh, yes. He read the deposition.

THE COURT: Did you read it?

THE WITNESS: Yes, sir.

THE COURT: Did you understand everything you read?

THE WITNESS: Yes, sir.

THE COURT: When did you sign it?

THE WITNESS: Yesterday.

THE COURT: All right, administer the oath to him.

MR. DANAHAR: Mr. Anderson, is this your signature --

THE COURT: To the deposition.

MR. DANAHAR: To the deposition?

THE WITNESS: Yes.

THE COURT: Did you put it on there yesterday?

THE WITNESS: Yes, sir.

THE COURT: After you read the testimony?

THE WITNESS: Yes, sir.

THE COURT: Do you swear to the contents of it?

THE WITNESS: No, sir.

MR. DANAHAR: Do you at this time swear to the contents of this deposition?

THE WITNESS: I said everything in there, yes.

THE COURT: In other words, you swear that that is a true transcript of the questions that were put to you 60 days ago and the answers you gave at that time?

THE WITNESS: Yes, sir, that is what I said.

BY MR. COHEN:

Q How many times have you read over that deposition before today?

THE COURT: That's called a deposition. Do you understand?

THE WITNESS: Yes, sir.

A I read through it twice, I believe, and I went through parts of it.

THE COURT: Didn't you read the whole thing?

THE WITNESS: I went through it twice.

THE COURT: You read it twice from the beginning

to end?

THE WITNESS: Yes, sir.

THE COURT: And then you went over and read parts of it?

THE WITNESS: Yes. I glanced at it.

THE COURT: That's after you read it twice?

THE WITNESS: Yes, sir.

THE COURT: Is it not conceded, Mr. Danahar, that this witness made absolutely no changes whatever in the transcript of the deposition 60 days ago?

MR. DANAHAR: Your Honor, to be honest with you, I haven't gone through each page, but I will ask the witness right here and we can cover it that way.

THE COURT: All right, Mr. Cohen, you have a right to pursue it. I'm sorry.

Q Mr. Anderson, if I understood what you said before, the questions and answers that I just read to you from your deposition you said didn't accurately express what you wanted to say at the time you said it. Is that what you testified to now?

A Yes, sir.

Q On the two occasions that you had thereafter to read through your testimony, did you make any change in it so it would accurately reflect what you now say you wanted

to say?

MR. DANAHAR: I object to this, your Honor.

THE COURT: Objection sustained. That is exactly what I meant before with regard to my remarks.

MR. COHEN: What was that?

THE COURT: It is clear to me that the witness is now saying that testimony of the answers he gave in that deposition were answers due to fear, et cetera, et cetera.

MR. COHEN: To what? I'm sorry, your Honor. I missed a word.

THE COURT: Answers that were due to fear; that he had apprehension that he says he had at the time, but he made it clear that the questions and the answers that are reflected in that deposition were the questions put to him and the answers that he gave. That's an entirely different thing.

MR. COHEN: May I put a different question, your Honor?

THE COURT: Yes.

Q Are you saying that you were nervous at the time you were in my office and were being asked the questions?

A Yes, sir.

Q When thereafter the questions and answers were typed up and the written transcript was given to your

attorney and you read the written transcript, you were not in my office then, were you?

A No, sir.

Q Where were you at that time?

A My home, sir.

Q Mr. Danahar gave you the written transcript so you could read it at home; is that right?

A It was mailed to me, yes, sir.

Q When you read it at home you weren't nervous, were you, sitting in your home reading this?

A No, sir.

Q Now, at the time you were at home reading this written transcript through at least twice, did you make any changes so as to better express what you say you wanted to express?

THE COURT: You still haven't got the point and you are wrong. You are wrong, sir.

MR. COHEN: Your Honor --

THE COURT: No, I am saying so and I will give you a chance to correct it. The witness's position is that that transcript does accurately reflect what he said. He has no power to change it. He wouldn't dare change a word of that. He can only ask himself "Did I say that on that occasion." He insists that he did say it. There

is no question about that and, therefore, he had nothing to correct, but when he did give that testimony, in certain areas the answers he gave as they are reflected do not constitute the height of accuracy because at the time he was nervous, et cetera. Is that not the position?

MR. DANAHAR: Exactly, your Honor.

THE COURT: There it is. It's 4.30 and I do not want to go on with this any further without saying something to the jury.

Do you understand what I just got through saying?

THE WITNESS: Yes, your Honor.

THE COURT: Did you follow me? You either understood me or you didn't.

THE WITNESS: Yes.

THE COURT: Don't accommodate me. Don'tgive me anything, I don't need it.

THE WITNESS: Yes.

THE COURT: Did you understand what I just said?

THE WITNESS: Yes, sir.

THE COURT: Is that your position?

THE WITNESS: Yes, sir.

THE COURT: Are you saying that the questions that were put to you, as you heard read, in that deposition before were the questions, each and every one,that were put to you?

THE WITNESS: Yes, sir.

THE COURT: Are you saying that the answers that are in that deposition that you gave are actually the answers that you gave 60 days ago?

THE WITNESS: Yes, sir.

THE COURT: Each and every one of those answers --

THE WITNESS: Yes, sir.

THE COURT: -- are the answers that you gave 60 days ago?

THE WITNESS: Yes, sir.

THE COURT: What you are saying is that some of those answers were not accurate because while you did give them, you gave them because you were nervous?

THE WITNESS: Yes, sir.

THE COURT: Isn't that what you are saying?

THE WITNESS: Yes, sir.

MR. COHEN: May I at this time ask your Honor for a charge to the jury that the Federal Rules of Civil Procedure permit a witness who has testified on a deposition to make corrections in his testimony at the time he signs the same if upon reading it over he finds he made errors?

THE COURT: I will not so charge. I will say that that is the position of this witness with regard to that deposition regardless of whether or not there is a

rule such as you quote. That's what his position is. It's for the jury to determine whether they want to accept it.

MR. COHEN: I am asking your Honor for a charge to the jury to say that the law permits a witness to make changes in his deposition if upon reading it over he finds errors. I ask your Honor to so instruct the jury that that opportunity was afforded to the witness because I believe your Honor has said to them that he couldn't possibly make any changes.

THE COURT: Sir, you heard what the Court said. You will have your opportunity between now and the time of the charge to say anything further. I refuse to say anything further on that score right now. We have developed what the witness's position is with regard to that deposition and I have done that as thoroughly as I know how. At any rate, you give me whatever you wish by way of a commentary that I can make at the appropriate time. All I am concerned with, I repeat, is what is this witness's sworn testimony as he sits on that stand before this Court and this jury and that, I think, has been established. You can argue later on, if you wish, that there was an opportunity; that the law says this, that and the other, but that's got nothing at all to do with what his position is right

now, as to his sworn testimony with respect to that deposition. If they want to believe it, that's their province. If they want to disregard it, that's their province, but I want them to know what his position is regardless of what the law has got to say; regardless of what the rules may have. Do you get my point?

MR. COHEN: Yes, your Honor.

THE COURT: That's the way it is.

MR. COHEN: May I, in the absence of the jury, meet with you, opposite counsel and the court reporter?

THE COURT: Ladies and gentlemen of the jury, it is now half-past four. You have had a full day. I told you when we started yesterday that the attorneys would do their level best to move this case along and they have. You know, Mr. Danahar could have no idea how long Mr. Cohen will take on cross-examination. This little bit of interplay here runs into a substantial period of time. I would venture to suggest that on this very little item dealing with the point just raised by Mr. Cohen, we might have spent fully 35, 40 minutes. Now, one doesn't know how long one would have to take in order to complete an examination, so when you think that witness will only take 15 minutes, it sometimes turns out to be three hours. What am I going to do, cut it off? As long as it's

legitimate, I have got to let it come in. I can't silence anybody because time passes on. I have a trial scheduled for next Tuesday, a criminal case, and yet in all likelihood I will have to move that. Why? Because the chances are that we may well find it impossible to complete this trial this week. Monday is a holiday, Washington's Birthday. I don't know which ones of you have plans. I don't dare monkey around with your plans. You have got families. The counsel don't want too either. They have as much respect for you as I have. But these are the things that happen. A trial is a trial. It's like a doctor going in on an operation. You examine the X-rays and all the tests andwhen you get in there, oh, my heaven's, what you strike. You had no idea. So, that's the way it is with a trial. What am I trying to say to you is this: after the cross-examination Mr. Danahar still has witnesses to call. He has a doctor, that will take time, his testimony. He has got a nautical expert, that will take time. He has got another witness, that will take time. Mr. Cohen has a right to cross-examine each one of them thoroughly. That takes time. So, tomorrow we will sit until aboutthis time, five o'clock. Thursday I would like to tip you off that we may very well have an evening session.

Tell the folks that that may come to pass. If you will just understand that so that we can let you go Friday, Saturday, Sunday and the holiday on Monday and come back Tuesday and finish the case, that's the prognostication. If you're saying why, it is because you have got families and I think I owe it to you, so that you can figure out what you are going to do in the event the case goes over to next week. Do you understand it?

Do you all understand it?

There it is. Would you announce an adjournment until tomorrow morning at 10 o'clock on the button.

THE CLERK: The court stands adjourned until tomorrow morning at 10 o'clock.

THE COURT: Will counsel be good enough to come on in.

(Jury left courtroom.)

(In the robing room.)

MR. COHEN: With all due respect, your Honor, I feel it incumbent upon me at this time to respectfully ask for a mistrial. I think that the little exchange that we had out there with your Honor's statements to the jury has completely emasculated the defendant's -- or one of the defendant's defenses in this case, which is to the effect that the testimony we have heard from this plaintiff

on direct examination this morning is a recent fabrication and it's completely different from the sworn testimony he gave on his deposition approximately two months ago. When your Honor told the jury that Mr. Anderson could not possibly have made a change in his transcript, what your Honor did was to prevent me from developing that not only did he swear that this was true at the time he gave it, but that when he read it over and signed it, he was once again swearing that it was the truth, and at that time, your Honor, he was in his home reading it leisurely without any problem about being nervous because he is in my office. And, your Honor, I think you inadvertently said -- and I think you are dead wrong on it, but the rules do permit a record to be corrected by a witness at the very time it's signed. That's the very purpose for having it signed at the time it's typed up.

THE COURT: Mr. Cohen, conceding that you are right for the sake of argument, you seem to fail to recognize what this witness is saying to us under oath here. He is saying that the questions that the deposition reflect were in fact put to him; that the answers there reflected were in fact given by him, each and every question and each and every answer. He is saying in addition that for that reason there was nothing for him to correct because

he did give those answers to those very same questions, but he wants us to know that wher he gave some of those answers on that deposition, they were not accurate answers because he was nervous, but that he gave those answers he concedes.

MR. COHEN: That's right.

THE COURT: Your gripe is --

MR. COHEN: If I may, your Honor, respectfully say the rules do permit a witness to change an inaccurate answer at the time of execution, and that's the purpose of it.

THE COURT: You didn't develop that he knew that. You didn't develop whether Mr. Danahar told him he could change it.

MR. COHEN: Your Honor told the jury as a matter of fact that he could not make any changes in the deposition, but that is not the case. I believe it came out inadvertently, but they have been charged most vigorously by your Honor.

THE COURT: I kept on emphasizing what this witness is concerned with. Just take it easy. What I wanted the jury to get is what this witness's position is because you have already made it clear in the opening and in your cross-examination that you were going to show that his answers were not truthful answers, and you came

almost to nailing that down because he said, "My answers were not accurate and they weren't accurate because I was nervous," and what you are incensed about is that he didn't change those answers to reflect the truth under circumstances at his home when he was not nervous, and my answer to that is that he was never so instructed that he could change it to accord with the truth and to be more accurate. Mr. Danahar, you, as a lawyer, do you say on the record that you told him he could change it if it was not accurate?

MR. DANAHAR: I say on the record that I did not tell him that they could be changed if they were not accurate.

THE COURT: All right.

MR. COHEN: May I ask, Mr. Danahar, do you, as a lawyer, state for the record that Mr. Anderson told you there were inaccuracies in his testimony when he signed it?

MR. DANAHAR: At the particular time that he signed this yesterday, there was a discussion between us, and he acknowledged that there were inaccuracies, one of them being the very inaccuracy that Mr. Cohen has raised just recently.

THE COURT: Very good.

MR. COHEN: Now, if your Honor please, just to

go back over it --

MR. DANAHAR: As well as another point.

MR. COHEN: Your Honor referred to my opening and in my opening I said that the claim being made by Mr. Danahar in his opening was contrary to the sworn testimony given by this plaintiff just two months before. Now, in an effort to wedge themselves out of what they said two months before, we get a contention that "I was nervous when I testified two months before." Judge, you may believe it, or you may think the jury believes it, but I am not bound to accept it in representing my client. We don't believe he was nervous or didn't understand. These were simple questions in simple English, and I want to show that even if he was nervous at that time and didn't well express himself in responding to very simple questions. He had ample opportunity in the two months that have elapsed since when he read this over twice, in the leisure of his home, not surrounded by lawyers, and in the times he spoke to Mr. Danahar, to make corrections of any inaccurate testimony he claims to have given and all I am saying to your Honor is that the Federal Rules permit such testimony to be corrected where it's inaccurate.

THE COURT: You are ducking the essence of this, Mr. Cohen. I am sorry to have to say that, but it's

quite clear that you are. It's quite clear to me now that Mr. Danahar has spoken up, that Mr. Danahar never told this fairly ignorant, apparently ignorant witness that he could change the answers of the deposition if they did not accurately represent the truth. Whether the rule says so or not, the fact remains that Mr. Danahar did not inform this witness that he could make changes if the answers were not accurate or truthful. Mr. Cohen did not develop that this witness -- I repeat, clearly restricted in intelligence -- he did not bring out through the witness that the witness knew that the witness could change the answers of the deposition if they did not reflect accurately or truthfully the facts. It is quite clear that the witness and Mr. Danahar addressed themselves to one point, and that is does the deposition reflect the questions that were put and does the deposition reflect the answers that were given.

Now, I see nothing to the abuse that Mr. Cohen is laboring under. He has gotten the witness to say that some of his answers were not accurate, even though the way they appear in the deposition was the very answer he gave. It seems to me that the very purpose that Mr. Cohen wishes to accomplish has been accomplished. If the jury wishes to adopt his interpretation, and insofar as saying your Honor may believe or the jury may believe or your Honor

may think the jury believes -- that has nothing at all to do with the issues involved here at all. I am not reflecting on whether I believe the witness or don't believe the witness. I want the witness's testimony, however, so the jury can know what his testimony is. To that end, I devoted a lot of time in order to find out just what it is that he wishes to convey. Frankly, I don't hesitate to say, since Mr. Cohen raised it, that I have considerable doubt as to whether this witness entertained at the time of the deposition the fear and apprehension that he says.

I am not sure one way or the other, but that, I repeat, has nothing at all to do with the Court's endeavor, which was to lay before the jury what is the position of this witness with regard to the deposition, and that's all I am concerned with.

MR. COHEN: I do not want to prolong this, Judge. I can't seem to get my point across. May I just try once more simply and clearly?

THE COURT: No. Your point is clear. Your point is that you maintain that the Judge told the jury that there was no power residing in the witness to change that deposition.

MR. COHEN: That's right.

THE COURT: Wait a minute. And I say even though that were so, there wasn't a word brought out by Mr. Cohen to show that the witness was on notice in any way whatever that he had the power so to do.

MR. COHEN: I wasn't his attorney. Mr. Danahar represents him. He is an experienced lawyer of more years' practice and whether he advised his client properly or not is another matter, but the Federal Rules permit a deposition to be corrected, and you charged the jury that he was not able to make a correction.

THE COURT: Sir, the record is clear now.

MR. COHEN: Yes, sir.

THE COURT: I think Mr. Cohen has -- frankly, I think he pursued the matter beyond necessity. I think he got the witness to answer and was not content with it and as often happens on cross-examination, he overplayed his hand and now he is ready to shift the burden to the Judge because the Judge happened to say, did he have the power to make the accurate answer -- to change the answer to reflect greater accuracy. My answer to all of that is simply that there is no harm whatever. Conceding Mr. Cohen is right, there is no harm whatever to bring that out at the appropriate time. It's got nothing at all to do with what this witness has to convey with regard to his

sworn testimony as to that deposition and its contents and what he did when he got it. When he got it, he read it twice from beginning to end and a third time he looked at extracts of it and it was just yesterday that he signed it under circumstances that the record eloquently demonstrates. The oath had to be administered to him in my presence. That's how belated it was. But those are the facts and it's clear, overwhelmingly clear that at no time was this witness told that he could change that deposition in order to have it reflect the accuracy that he now maintains it lacks. That's all there is to it. At the appropriate time we will take up the point dealing with the rules. The jury has his testimony and I say, further, it would be pulling the wool over the jury's eyes -- which I am sure Mr. Cohen would not want to do any more than any of us -- if we were to leave that record, let that record convey the impression as he sought to have the Court say that this witness had the power to change those answers without first developing that he was on notice that he could do so. That would be highly improper and I do not accuse Mr. Cohen of engaging in such tactic. The witness has sworn that these were the questions, these were the answers he gave and then counsel wants to have the Court charge the jury right there and

then that the witness had the power to change those answers if he saw fit in order to accord with what he maintains is more accurate or more truthful.

MR. COHEN: I asked for a charge at that time only because your Honor has just before that charged the jury that the witness could not make any corrections and I thought this would be the appropriate time to correct that.

THE COURT: There may be something in that, but I see nothing fatal. I deny the motion in toto. There is absolutely no merit to it as I see it. Now, gentlemen, the Court states further that you both ought to consider whether that entire deposition should be laid before the jury for the reasons already indicated, but for the additional reason that the witness has said that he was asked the same sort of question many times and that on many occasions he gave what he maintains were accurate answers, but on other occasions he did not, and the issue is whether or not Mr.Cohen has picked out only the inaccurate answers and neglected to give the answers of the witness on the other occasions in the course of the deposition which accord with the truth.

MR. COHEN: I haven't finished reading it.

THE COURT: All right, so you intend to take

up the other portions of that deposition?

MR. COHEN: Oh, there is a lot more in that deposition.

THE COURT: No, on that same point.

MR. COHEN: On a number of points, yes, sir. There is plenty that I intend to take up.

THE COURT: Have you any objection to the whole deposition going in?

MR. COHEN: Yes. There may be some parts that shouldn't go in. Let me check it through tonight.

THE COURT: I think you gentlemen ought to get together tonight.

MR. DANAHAR: Your Honor, I would like to read parts of the deposition which substantiate what the witness has testified here on trial. As a matter of fact, I have each page numbered already where I would like to read from which will support what he has said here on trial as far as him catching his hand.

THE COURT: I already indicated that I would allow it, and I think you gentlemen should, in the light of what has developed, consider seriously the introduction of the entire deposition.

MR. COHEN: Maybe. It just means reading this whole thing to the jury, Judge.

THE COURT: It may very well mean that, but the question is -- in fact, I am not going to stop this request. I am going to direct that counsel please decide by tomorrow morning what portions they are in agreement should be read to the jury from that deposition and what portions they are in disagreement over and submit it to the Court for resolution. I hope that you can agree in toto so there will be no time spent by the Court on secondary or cursory things that really don't count too much, but if you find that there is something in substance that I have to rule on, that's my obligation, but will you please try, since this has become very important and since the defense does look to it as a challenge to the veracity of the plaintiff's testimony, I would direct that you sit down and decide what goes in from that deposition. Thank you, Mr. Cohen, and thank you, Mr. Danahar.

MR. DANAHAR: Are we just to deal with the accident itself, not the other parts of the deposition?

THE COURT: I don't know what's in the deposition, but both of you know what the deposition --

MR. DANAHAR: There were questions about how long you were out of work and all that kind of stuff; what your wages were and howmuch did you earn.

THE COURT: Of course not. Mr. Cohen will see

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that as much as you. The point is the essence of the deposition that relates to what happened today.

All right. Good night, gentlemen.

MR. COHEN: Good night, Judge.

MR. DAMIAR: Good night, Judge.

(Adjourned to Tuesday, February 13, 1974, at 10.00 a.m.)

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Michael T. Anderson

-vs- 71 Civ. 2910

Great Lakes Dredge & Dock Co.

New York, New York
February 13, 1974--10:00 a.m.

[In open court - jury present]

THE COURT: Counsel, I understand you wish to say something to me. Come up here and, Mr. Court Reporter, you come along.

[At the side bar]

MR. COHEN: Judge, Dr. Smith who examined plaintiff for us back in 1971 is no longer around here. Can I have an up-to-date examination of the plaintiff by a doctor during this four-day interval we are going to have so I can have the doctor examine him?

THE COURT: What do you say?

MR. DANAHAR: I don't remember any Dr. Smith examining this plaintiff.

THE COURT: Of the record.

[Discussion off the record]

MR. DANAHAR: Judge, as I said, I don't remember a Dr. Smith examining.

MR. COHEN: He did.

MR. DANAHAR: I thought it was a Dr. Johnson.

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THE COURT: He said no.

MR. DANAHAR: I have a report of the doctor and will check it.

THE COURT: Would you do something for me? These are things you gentlemen should iron out among yourselves, and when you come to an impass then you come to the Judge.

[In open court]

THE COURT: Would you be good enough to hand me up the original deposition taken of this plaintiff? Give it to the Clerk, please.

MR. COHEN: Yes, your Honor.

[Handing]

THE COURT: Thank you. Come back to the stand, Mr. Anderson.

M I C H A E L T. A N D E R S O N, the plaintiff, called as a witness, having previously been sworn, testified further as follows:

THE COURT: Mr.Anderson, you understand that you are continuing with your testimony under oath because you have not completed your testimony. Do you understand that?

THE WITNESS: Yes sir

THE COURT: Very well.

Now, ladies and gentlemen of the jury, I think it is imperative that we clear up any misapprehension with

regard to the point raised toward the close of yesterday afternoon.

I have always believed that it is the primary function of a Judge to step in and make clear to a jury what it should consider. How it considers it, what weight the jury gives to it, is the jury's business. But that the jury should understand what is going on and what is taking place, no matter what exertion it requires by the Judge. In my book the Judge is bound to step in to clarify things. That is the reason from time to time you will hear me say, breakdown the question, do this, do that. And the sole purpose of that is to enable you to understand, because I have talked to too many jurors in my time, and I have learned, sadly, that many of them did not know good sections of the total trial. And that was after judgment was rendered. And that is horrifying.

The jury doesn't sit there and suddenly put its hand up and say, Judge, I don't get that. You can't tell whether the jury is, to use the vernacular, getting it. I hope they will. So I want to make this clear, because you have to fit it in. There is a contest here. The defendant takes the position that when this witness gave certain answers during the course of the deposition those answers were not true. You heard the answer of the witness. He

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spoke about fright, fear, whatever that is. Those are things for you to weigh. But you have got to understand the circumstances under which these things were done and what the law provides with regard to the entire matter of the deposition and any changes.

You remember the suggestion -- not a suggestion, it was firmly said -- you had a chance to change the deposition. Well, it isn't as easy as that. And that is what I want to point out to you.

This deposition was taken two months ago to the day, two months ago. December 13, 1973. Where was it taken? In the office of Mr. Cohen's law firm. That was perfectly proper. That is the way those things are done.

He wants to examine the plaintiff, or, he wanted to. He had a pefect right to have him come to his office with his lawyer, Mr. Danahar, and put questions to him. That is exactly what was done.

Mr. Cohen conducted the examination.

MR. DANAHAR: Excuse me, your Honor. It wasn't Mr. Cohen.

THE COURT: I beg your pardon. Mr. Testa. You are absolutely right. Mr. Testa was a member of the firm?

MR. COHEN: Yes, sir. He is in my office.

THE COURT: He is connected with Mr. Cohen's firm.

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Mr. Testa conducted the examination for the firm representing the defendant. Now, you have got that, haven't you? Now, this was the stipulation that the lawyers entered into on the occasion of the taking of the deposition.

At the very outset here is what appears: It is stipulated, by and between counsel to the parties hereto that the sealing and filing of the testimony are waived, that all objection except as to form are reserved until the time of trial, that the witness may sign his testimony before any Notary Public, that one copy of the testimony will be forwarded to counsel for the plaintiff without charge.

Then the record shows immediately after that stipulation I just read to you, Michael T. Anderson, having been first duly sworn, testified as follows: Question, answer, question, answer, from page 2 all the way through to page 74. In fact, at the very end Mr. Testa of the law firm for the defendant said, "That is all."

The taking of testimony was concluded at 3:25 p.m. The signature of this witness appears at the very end. Michael T. Anderson. He swore to it and subscribed to it before Mr. Danahar, who is also a Notary Public, as well as an attorney, on the 11th day of February, 1974.

Now, the rules of the court provide that when a depostion is completed it is to be forwarded to the attorney

for the other side, who then sees that it gets to the person whose deposition was taken.

I pause long enough to interrupt this dissertation to put a question to the witness before I proceed. Listen carefully.

Now, if before you are through with your testimony any question is put to you that you do not understand, you turn to me and you say, Judge, I don't understand. Do you understand that?

THE WITNESS: Yes, sir.

THE COURT: You just don't strike out with an answer anything that that's what is wanted. Be sure you know what the question is. Is that clear?

THE WITNESS: Yes, sir.

THE COURT: You told us yesterday, under oath, that you read your deposition twice from beginning to end.

THE WITNESS: Yes, sir.

THE COURT: You told us after you read it twice you glanced at certain portions of it. Am I right?

THE WITNESS: Yes, sir.

THE COURT: Do you want to change that? Do you stick by that?

THE WITNESS: Yes, sir.

THE COURT: All right. Did anybody, anyone in

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the world, by writing, speaking to you in any way, anywhere at anytime up to this very moment, did anyone ever tell you that you had the right to change any answer you gave in the course of your deposition if you believed the answer to be inaccurate?

MR. COHEN: May I respectfully object to your Honor's question?

THE COURT: Objection overruled.

Anyone?

THE WITNESS: Not until yesterday.

THE COURT: Not until yesterday?

THE WITNESS: Yes, sir.

THE COURT: In this courtroom?

THE WITNESS: Yes, sir.

THE COURT: When you got it from Mr. Danahar did he in effect tell you to look at it, examine it and sign it if you found that the questions there put were the questions asked you and the answers in the deposition were the answers you gave?

MR. COHEN: May I again respectfully object --

THE COURT: You have an objection to all of this, sir.

MR. COHEN: Thank you, your Honor.

THE COURT: I am attempting to clarify this.

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What is your answer?

THE WITNESS: It was mailed to my home and two days later I did get it home, I read it. I didn't get no -- all he said was to read it.

THE COURT: To read it.

THE WITNESS: Yes.

THE COURT: So that no one told you how to change it if you wanted to change it?

THE WITNESS: No, sir.

THE COURT: When you got through reading it did you get it back to your lawyer?

THE WITNESS: No, sir.

THE COURT: How did he get it back?

THE WITNESS: Monday.

THE COURT: You handed it to him?

THE WITNESS: Monday, yes, sir.

THE COURT: You brought it into court?

THE WITNESS: I gave it to him Monday morning downstairs.

THE COURT: All right. So you brought it to the courthouse.

THE WITNESS: Yes, sir.

THE COURT: Last Monday?

THE WITNESS: Yes, sir.

THE COURT: The first day of the trial here; is that right?

THE WITNESS: Yes, sir.

THE COURT: After you left yesterday afternoon, ladies and gentlemen of the jury, I had a conference with the attorneys, and on the official court reporter's minutes, on the record of the official court reporter I turned to Mr. Danahar, the attorney for the plaintiff, and he answered, on the record, that he never told him, Anderson, that he had the right to change, or the law provides that if there is anything that he read in the deposition that is not accurate it could be changed. And that Mr. Danahar merely told him to read it, and if it was accurate to sign it.

Is that what you said yesterday, Mr. Danahar? In substance?

MR. DANAHAR: Well, in substance --

THE COURT: Do you want to change that? Do you hesitate? Change it.

MR. DANAHAR: I don't recall that I said yesterday that I told him to read it and sign it. That's the only thing.

THE COURT: All right.

MR. DANAHAR: But the other part is absolutely correct.

THE COURT: Well then, repeat. What did you say?

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Did you ever tell him that if there was anything incorrect or inaccurate it could be changed?

MR. DANAHAR: I did not, your Honor.

THE COURT: All right. Now, what does the law say when a deposition is taken and a witness who gave the deposition finds that certain answers are not accurate, even though he gave those answers? Can you do anything about it? The answer is very simple, and common sense, it is what I said to you yesterday. You must not change that answer. You cannot strike it out. You cannot touch it in any way, because the jury is entitled to know what that answer was when it was given.

If you want to change, there is only one way. You have to appear, unless it is waived by the attorneys, you, the one who gave that deposition must appear before that Notary and you must say, I want to change such and such an answer, or answers. That answer or answers do not properly reflect the truth. And, I want to change it because;he must assign a reason why he is making the change.

The change must be noted by that officer in writing. The reasons for the change must be noted by that officer. And the changes must be sworn to, because that is something new.

Now, what could be more orderly than that?

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A deposition is taken, it is sworn testimony, just the way a witness is sworn in open court. The witness is then given the transcript of what he said under oath, he is asked to read it, he reads it.

Two things he must do: One, sign his name, if it is correct as to what it reflects, and if he wishes to change any part of it he must not touch it himself. He must make those changes by appearing before the officer who administered the oath or another officer to administer the oath and make it clear what his change is and why. And unless it is done that way the changes are not recognized.

Suppose the witness, a witness, a deponent takes the deposition and doesn't strike out any answer but he writes after a certain answer, "This answer is not accurate, it should be" and then he proceeds to say it. Then signs it. That cannot be recognized by the Court.

You either make the change in accordance with the rule, or you are out. It is as simple as that. When you make a will there have got to be a number of witnesses, and you can't choose whether it should be less than the law permits. And if it is less, it is not recognized. No matter how good it is in every other respect.

Now, suffice it to say this isn't touched. There is no correction of any kind. And I say to you further and

tell you it is the law that no witness can be held accountable for not making a change if he was not advised that he had that power, or had that right to record, or have recorded a change.

What would any lay person think, isn't it common sense when he is asked to look at a deposition? The first thing that will occur to him is, I am asked to state whether or not those questions were put to me and whether I gave those answers when I gave that deposition.

It would never occur to him he would have a right to touch it, or alter it, or record his change unless he were told so.

So, in effect, I am saying to you that unless the rule is complied with, the changes, if there are any, are not recognized insofar as the deposition is concerned.

But I say to you further that the rule has no applicability if the witness did not know that he had the right to have the change recorded in the manner that I have set out for you in my own stumbling fashion.

So, to recapitulate, when a deposition is had and the person deposed, that means the person who gave the answers to those questions reads it, he must be made to recognize, one, were those questions put to you as reflected in that deposition? Were those answers so reflected there

given by you? That is part one.

He must also be told, if you wish to change any answer that you gave at the time the deposition was taken you may make that change provided you do it in a certain form, and, further, that you give a reason why you are changing it. And that change and reason for the change must be recorded.

So that in essence the objective of the law is that in the event a jury should have to pass on a deposition, what can be more sense than it should know what the witness said at the time under oath, when it was that the witness wished to record a change and why, so the jury can weigh the whole thing and give it that weight that it thinks it deserves.

It might very well say the change shows that he is a liar. Or the change shows that he wanted to make it clear. Or the change shows this, that and the other. But the jury must be in possession of exactly what took place with regard to that witness's answers.

When you are giving an answer to a question for the first time that is what we call spontaneous testimony. You don't get a chance very often to think it out. The lawyer puts a question and you have got to answer it. And so a jury would weigh the kind of answers that a man gives

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at the time he gives the deposition, and the kind of answers that he gives later when he changes it.

All these things are for the jury to weigh. They don't always point in the same direction. A witness may be absolutely honest in making his change.

Simple example: A fellow says, a witness says at the time of the taking of a deposition in answer to the question, how old are you? Answer, eighteen. A lot of other questions are asked. A lot of other answers are given. He then gets the transcript and there it says, "Question, how old are? Answer, eighteen." Well, he says I was asked that question and I did give that answer, but I'm not eighteen, I'm twenty. I have been saying I have been eighteen for a great number of years, but the birth certificate that was lost shows that I am really twenty. I want to change that because I am not eighteen, I am twenty.

Whereupon he does not touch that answer, he doesn't scratch it out, he must not mutilate it, alter it. It's got to shows that the question was, how old are you, and the answer given at the time was eighteen.

Then the change is recorded the way I told you. I am twenty. And the reason I changed it is that the birth certificate was lost and I have been saying for years that I was eighteen based on that birth date which has been

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corrected. I should have known better, because I knew it at the time I gave that answer that I was twenty, but I have been saying it so long that I figured it at eighteen and I just didn't bother to change anything. I want to change it now because it's inaccurate.

Then it is up to the jury to decide whether that is a cock-and-bull story or whether it is on the level or whether that is pefectly natural, and so forth and so forth.

Now, Madam Forelady, have I made myself clear?

THE FORELADY: Yes, sir.

THE COURT: Madam?

JUROR NO.2: Yes.

THE COURT: Sir?

JUROR NO.3: Yes, sir.

THE COURT: You sir?

JUROR NO.4: Yes, sir.

THE COURT: Madam?

JUROR NO.5: Yes, sir.

THE COURT: You sir?

JUROR NO.6: Yes.

THE COURT: Mr. Alternate?

ALTERNATE JUROR NO.1: Yes.

THE COURT: Second alternate?

ALTERNATE JUROR NO.2: Yes.

THE COURT: I am not restricting counsel on either side to ask any questions with regard to what I have just stated to the jury. Before you do so, however, will you give me just a minute, gentlemen? I would like to read you the formal language that relates to the explanation that I have just given you, not because I don't think you understand, but because I want the record to be complete.

The Federal rules relating to this situation provide "When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties.

Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them.

The deposition shall then be signed by the witness unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign."

That is word for word what the rule provides. Changes, says the law, in a deposition can willfully be made only, and I emphasize only, in accordance with the terms of this rule.

That is what the cases decided by the Judges interpreting the rules have held.

Accordingly, while the right of a witness to change his testimony is clear, he has no right to make any changes on his own. Rather any changes must be entered by the officer before whom the deposition was taken.

Moreover, the original testimony must appear in the deposition, together with the changed testimony so that, says the law, "If the deposition is used at the trial a true picture will be presented."

Where a witness fails to make changes in his testimony at the time he reads it over, such failure cannot be held against him absent a showing that he was aware of his right to make the desired changes, and that he had adequate opportunity to make them.

So if in fact this defendant was not informed that he had the right to have recorded any change --

MR. DANAHAR: Excuse me, your Honor. You said "defendant".

THE COURT: Will you read it to me, Mr. Court Reporter?

[The record was read]

THE COURT: Thank you, Mr. Danahar.

So if this plaintiff, this witness, was not

informed that if there were any changes he wished to make in his deposition there was a method available to have such changes recorded, if he was not aware of it or made aware of it, he cannot be held accountable for not making the change in the deposition.

Now, Mr. Cohen, I owe you at least the courtesy to give you a chance to say what you have been trying to say, and I have been asking you to hold off until I got through.

MR. COHEN: Thank you, your Honor. This is difficult for me to say, but with all due respect I must take exception to the proceedings we have had so far today, and I would like to have my exception and objection noted on the record.

Again, sir, with all due respect I must renew my motion for a mistrial that I made yesterday afternoon.

THE COURT: The motion is denied.

Is there anything you wish to say, Mr. Danahar?

MR. DANAHAR: No, your Honor.

THE COURT: Very well.

MR. COHEN: Now, if your Honor please, may I ask that that original transcript of Mr. Anderson's deposition be received in evidence.

THE COURT: Of course. Is there any objection?

You were going to offer it yesterday.

MR. DANAHAR: Yes, I do object to having it marked in evidence, your Honor.

MR. COHEN: I told Mr. Danahar I plan to read the entire deposition to the jury in view of the testimony Mr. Anderson gave yesterday.

THE COURT: Then we will have to talk about it. You know, Mr. Cohen, when a Judge says to you and to your opponent, gentlemen, I would suggest that you get together and decide what portions of the deposition you wish to read to the jury, you don't suddenly get up the way you do without telling me, Judge, we got together, we sat down, and give him a chance to record why he objects to any portion, etc. You don't suddenly announce it that way and don't give me a chance to find out what there is abrewing. I have never read it.

Now, we will hold that up until we in the proper way sit down and talk about it and give counsel an opportunity to tell me what is on his mind. A deposition doesn't necessarily go in in its entirety if there is not good reason for it. If it all should go in, fine, I was the one yesterday who suggested that possibly it would be best to put in relevant portions of the deposition. And I was the one who asked you to get together last night and

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see if you could arrange what parts would go in.

Suddenly I am not told what you decided upon, I am suddenly confronted with a motion, I want to put the whole deposition in, and then the answer, there are certain parts I don't think ought to go in.

Well, I have got to know what those parts are. I never saw this thing before, this deposition. Let me take a look at it. I will make rulings, and those rulings will be rulings of law and no concern of the jury.

Will you begin your cross-examination.

MR. COHEN: If your Honor please, may I address myself to what your Honor just said?

THE COURT: Yes.

MR. COHEN: Mr. Anderson, as I believe it, testified yesterday that I was picking and choosing from his deposition. In accordance with your Honor's suggestion made in the robing room after the court session yesterday it is my intention now to read the entire deposition of Mr. Anderson to the jury so that they see that there was no picking and choosing, and so they get the benefit of everything that was said on the deposition and full flavor of what transpired at that time.

I submit, your Honor, I have a perfect right to use a deposition of an adverse party in that fashion.

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I may under the law read it from beginning to end.

THE COURT: Are you through?

MR. COHEN: Yes, sir.

THE COURT: What was the reason for that tactic?

MR. COHEN: I am sorry, sir? What --

THE COURT: What was the reason for that tactic you just employed right now? Did I say anything to the contrary? Or did I say you owed it as a matter of courtesy to let me hear what your opponent has to say with regard to opposition to what he --

MR. COHEN: I have no objection to that. But I understand that the practice is, your Honor, that I have a right to start to read, when I come to something he objects to he has the right to stand up and object. That is the fashion, it has always been done to my experience.

THE COURT: Well, you are all wrong and you know full well you are all wrong. All you want to do is make a recital. I will let you make a recital at the appropriate time. I don't want you doing things or saying things that are contrary to my understanding of what took place.

I repeat, yesterday afternoon I told counsel that I think that substantial portions -- Who is that man over there? Get up, sir. On your feet. What is your name?

MR. ARDIZZONE: Mr. Ardizzone.

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THE COURT: Are you a witness?

MR. ARDIZZONE: No sir.

THE COURT: Are you interested in this case?

MR. ARDIZZONE: Just to watch the proceedings.

THE COURT: Are you a lawyer?

MR. ARDIZZONE: No sir.

THE COURT: Well then, you sit there with respect. Say anything and do anything you want outside. Did you understand what I said?

MR. ARDIZZONE: Yes sir.

THE COURT: Get up on your feet when I talk to you.

MR. ARDIZZONE: Excuse me, sir.

THE COURT: I won't have you show disgust openly with what I am doing. I know when a man shows it. Do anything you want outside, mister, not in my presence.

MR. ARDIZZONE: Excuse me, sir. It wasn't my intention.

THE COURT: Well then, behave yourself.

MR. ARDIZZONE: Yes sir.

THE COURT: Come forward. Come forward. Give your name and your address for the record. Stand right there. What's your name?

MR. ARDIZZONE: Roy Ardizzone.

THE COURT: Where do you live?

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MR. ARDIZZONE: 2047 East 13th Street, Brooklyn.

THE COURT: Are you known to these parties?

MR. ARDIZZONE: Which parties? Excuse me.

THE COURT: The plaintiff or the defendant?

MR. ARDIZZONE: To Mr. Cohen.

THE COURT: What have you got to do with Mr. Cohen?

MR. COHEN: May we approach the bench, your Honor?

THE COURT: No. I want this out in the open. What have you got to do with Mr. Cohen?

MR. ARDIZZONE: I'm with the carrier.

THE COURT: You are with the carrier?

MR. ARDIZZONE: Yes, sir.

THE COURT: Sit down.

MR. COHEN: I respectfully ask for a mistrial, if your Honor please.

THE COURT: Denied. Let the record show that yesterday afternoon, on the record, I pointed out that Mr. Cohen possibly inadvertently had given the jury the impression that this witness had been aware that he had the right to change any answer in the deposition, and that he didn't do it. And I said repeatedly to Mr. Cohen, you know full well that if the witness wasn't told about it he could not possibly have made any change.

I then turned to Mr. Danahar and I said, what

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about it? Did you tell Anderson that he could make any change he found necessary, or have it recorded? And he said, no. And he repeated it before you this morning.

I then said, yesterday afternoon, gentlemen, I think it best that you sit down, in fact, I direct you to sit down as lawyers should and go over the deposition and see what portions of the deposition you can agree on should be placed before the jury. They shouldn't be loaded down with things that aren't pertinent. In a deposition there is a lot of material sometimes that is not relevant.

Both of them promised they would do so. I then said, now, look, if there are portions that you disagree on I will have to resolve it. See what you can, however, agree upon.

You heard it. You were here. I made it clear to Mr. Cohen right in your presence that that was what the agreement was last night, and I was to be told this morning what portions they agreed on and what portions they didn't agree on.

Instead Mr. Cohen stands up and says, I want to put the whole depositon in evidence. Mr. Danahar said the whole thing shouldn't go into evidence, and I object to certain parts of it.

I then said, as the record will show, you should

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have first told me, Mr. Cohen, what you people had agreed on pursuant to my direction, and what you did not agree on. You don't suddenly ignore what the Judge said you were to do, and then say, I offer it in evidence. That can be done later.

Right now I want to know what they did with my direction, and I want to know what Mr. Danahar has to say with regard to any objections. Therefore I say it was totally unnecessary for Mr. Cohen to get up and make his last recapitulation of what was already clear. That is the status of the record.

I will excuse the jury and take up these questions of law. What did you want to say before the jury leaves?

MR. COHEN: I would like to say for the record that unfortunately I am placed in a position of confrontation with the Court which is, I believe, an unfortunate thing. A climate has been created in this courtroom where I cannot possibly properly represent the interests of my client. I regret very much it has come about, your Honor. We have known each other for a long time. I sincerely regret under all the circumstances I am really compelled to renew my motion for a mistrial. I don't think I can properly do justice for my client in this case.

THE COURT: Very well, that is your opinion.

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I see no reason why a Judge should not have the right to say what he thinks, and I intend to say it as long as I draw a breath.

You may not like it, sir. I say again to you, that you were wrong.

MR. COHEN: May I also state for the record, your Honor, that I attempted to see your Honor before your Honor came to the bench at 10:00 o'clock this morning and was advised by the Clerk of the Court that your Honor would not see counsel until he came into the courtroom.

THE COURT: That is right, because you asked to come in a minute before the jury was due here, and I told you yesterday that they come first. When they are here they come and I am here to greet them. Don't give me any more argument. Please sit down.

Ladies and gentlemen of the jury, will you please leave the room and let me take up the matter of this deposition.

[Jury leaves the courtroom]

THE COURT: Now, sir, the jury is not here. I want you forward. Come here. Stand right there. What's your name?

MR. ARDIZZONE: Roy Ardizzone.

THE COURT: With what company are you?

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MR. ARDIZZONE: Kemper Insurance Company.

THE COURT: How do you spell it?

MR. ARDIZZONE: K-e-m-p-e-r.

THE COURT: How long have you been there?

MR. ARDIZZONE: Since July '73.

THE COURT: What do you do there?

MR. ARDIZZONE: I'm in the compensation department.

THE COURT: Does this particular case come under your inquiry, your investigation? Is this one of your cases?

MR. ARDIZZONE: Well, it's part of the --

THE COURT: Is it?

MR. ARDIZZONE: Yes sir.

THE COURT: I didn't ask you whether it was a part of anything. Is it one of the cases you are handling?

MR. ARDIZZONE: I'm not handling it personally, no sir.

THE COURT: What are you doing with it?

MR. ARDIZZONE: Well, the case was in existence before I came with the company. I'm here just to get an education.

THE COURT: Who told you to come here and get the education?

MR. ARDIZZONE: Well, it's part of my company's policy. This is my first exposure to an Admiralty type

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case, and I'm here to get an education along those lines.

THE COURT: And you have had no concern with this particular case?

MR. ARDIZZONE: The case was in existence before.

THE COURT: I didn't ask you that. Sure it's been in existence. Did you touch the case?

MR. ARDIZZONE: Yes, I have touched the case.

THE COURT: You knew that was the purpose of my question a minute ago.

MR. ARDIZZONE: Well, I have had nothing to do with the handling, sir, of doing anything. Only thing is to get the trial and everything back to Mr. Cohen. The case has been developed since --

THE COURT: Now, Mr. Ardizzone, I want you to know, and I want the record to show that you distinctly showed in my presence a disrespect by slumping in your seat and turning your head with disgust.

I have been a fact finder for forty-five, fifty years. I have disbarred lawyers in my time and helped remove Judges. I have exposed crooks in Government and in private industry. I'm a pretty good fact finder, and I know when a man misbehaves in my presence.

MR. ARDIZZONE: May I make a comment, sir?

THE COURT: No. I want the record to show that

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I intend to explore this further. You will show respect, not for me, I don't care about your respect, mister, but for the courts. Some of you fellows act like cheap bail bondsmen. You belittle the courts. You belittle Judges. You sneer. You snort.

Now, what do you want to say?

MR. ARDIZZONE: I'm sorry if I gave that impression, believe me. That was not my intent.

THE COURT: You are false. It was your intent and you clearly displayed it. And I may very well hold you in contempt.

MR. ARDIZZONE: I'm sorry if I gave that impression, but it's --

THE COURT: You are not sorry. That is hypocritical. You are just using your mouth. I repeat, your denial is false.

Where do you live?

MR. ARDIZZONE: 2047 East 13th Street.

THE COURT: East what?

MR. ARDIZZONE: East 13th.

THE COURT: Here in Manhattan?

MR. ARDIZZONE: Brooklyn, sir.

THE COURT: Any apartment number?

MR. ARDIZZONE: It's a private house.

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THE COURT: All right. When you sit down hereafter remember I don't have to take any rot from you or anyone else. I don't want to, have to, allow anyone to interfere with the due administration of justice, whether by gesture, whether by anything that a jury may see, and influence the outcome of the case or anything like that. And I am calling it when I see it.

MR. ARDIZZONE: Yes sir.

THE COURT: And I have called you on it. Sit down.

Now, Mr. Danahar, what is there about the deposition, what parts of the deposition do you find objectionable insofar as Mr. Cohen's offer to introduce the entire deposition into evidence?

MR. DANAHAR: May I say this, your Honor, as you already stated when we left the robing chamber last night, you directed us to try and agree on what portions of the deposition each party would want to read in. I left the robing room, I came out here into the courtroom and I said to Mr. Cohen, may we now sit down and see what we can agree upon? And Mr. Cohen took the position, well, I don't know, I'd have to read through it. And I said, well, suppose we meet tomorrow morning at 9:30 and we will decide upon that.

I arrived here not at 9:30, your Honor, it was approximately twenty-five minutes to 10:00, but Mr. Cohen

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was not here. When he did arrive, I don't know the exact time, but I think it was perhaps ten minutes later or so, I then brought up the subject of what we were going to agree upon, and at that time I was informed he intended to read the entire deposition, so there was no use of any further discussion as to what we should read, and I told him at that point that I was going to object to the reading of the entire deposition, and called to his attention the direction your Honor had given that we should only deal with those portions of the deposition that were pertinent to what took place here yesterday.

THE COURT: All right.

Now, Mr. Cohen, you heard Mr. Danahar.

MR. COHEN: Yes, sir.

THE COURT: What about it? Is there any correction? Is what he said so?

MR. COHEN: Yes. From a slightly different prospective, may I present the situation, your Honor?

THE COURT: Yes.

MR. COHEN: When we left your Honor yesterday afternoon Mr. Danahar and I had a discussion as to what should be read in and what might be objectionable. I said to him I would like to have an opportunity to read this through overnight to see if I have any objection to any

part. And if I haven't, I will so advise you in the morning. And we did in fact agree to meet here at 9:30 to dispose of that situation, as well as to exchange some records pursuant to your Honor's other directions.

I regretfully did not arrive here at 9:30. I arrived here at 9:40, if your Honor please. I saw Mr. Danahar and I said to him, I have read this deposition over, I have no objection to any part and I intend to read the whole thing. And that, it seemed to me, obviated the entire problem.

If your Honor please, my concern is twofold. Yesterday Mr. Anderson testified to two things: One, he said that he -- he professed not to have understood some of the questions that were asked him on the deposition, and he attempted to avoid some of his answers in that regard.

In addition he said that he was nervous and upset on the deposition. Now, my purpose in reading this entire deposition is to show the jury that the questions asked on the deposition were not legalese, technical questions, they were very simple, basic English readily understandable by Mr. Anderson or anybody else with his amount of education and upbringing, and that the answers given were also simple, easily understood.

That in many respects the answers did dovetail

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with his testimony, but that in other very material respects his testimony in the courtroom is radically different from that which he said upon the deposition.

I wanted to give this jury, and I still want to give this jury, the entire flavor of what transpired on the deposition so that they are able to make a judgment on his statement yesterday that he was nervous, or didn't understand.

THE COURT: Isn't that what I said in substance yesterday?

MR. COHEN: Absolutely, your Honor, and I am trying to comply with your Honor's --

THE COURT: No you didn't. You did not. I was the one who said exactly what you are saying now.

MR. COHEN: That's right, sir.

THE COURT: And you are saying it as though you thought of it.

MR. COHEN: Oh, no. Judge, I don't mean to take pride of authorship in that, and I didn't say that.

THE COURT: Now look, mister, I'm getting incensed. First you bring along a ruffian into the courtroom. I don't say that you conspired with him to have him behave the way he did in my sight. You are above that. But you did not comply with what I directed, and anybody who comes in here

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at 9:45 or 9:40 to do a job that I layed down is dead wrong and should never have allowed that to happen. There is no reason why this wasn't completed between you gentlemen last night.

If you wanted to let it go until this morning you should have given yourselves ample time to do it thoroughly. I am not supposed to pickup your mess, your oversights, your failures that you can detect as well as I. You have an obligation to the plaintiff and you have an obligation to the defendant and you have got to do everything right, not this come today, come tomorrow attitude.

The record shows that the way this was done is deplorable, and I regret that the Court got such short shrift at the hands of counsel on both sides.

Let the record further show that Mr. Cohen saw fit to say in front of the jury that he asked to come to see the Judge a minute or two before 10:00 o'clock, and I have already answered that and I would like to also add that when he asked permission to come to the side the very first thing he said, when I inquired what else is there, he didn't mention anything with regard to the deposition, as the record will show, and at the side bar I said, is there anything else, and he said, no, thank you.

Short recess.

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[Recess]

[In the robing room - both counsel and Mr. Ardizzone present]

THE COURT: Mr. Cohen, will you please repeat on the record what you said to me during the course of our off the record robing room discussion in the last twenty minutes or so as to the contact of this person with the case itself. Did you not in substance say to me --

MR. COHEN: Yes, Mr. Ardizzone is the manager of the compensation department of the Manhattan office of Kemper Insurance Company, which is the insurance carrier for the Great Lakes Dredging in this case.

That Mr. Aridizzone's department, his section, the compensation section paid the medical expenses of Mr. Anderson and also paid, as the law requires to be paid to a seaman, paid certain amounts of maintenance to him, and that Mr. Ardizzone's department, and he is the head of it, maintains their file in connection with that situation.

THE COURT: He is the head of the department.

MR. COHEN: He is the head of the compensation claims department, as I understand it. Mr. Ardizzone was in my office this morning, we had breakfast together. Mr. Danahar had served a subpoena on the insurance company. I asked Mr. Ardizzone to come down together with his file,

whatever I did not have, so I could make sure that I had everything. We had breakfast. I invited him to come along to court to see how the case was progressing. He said he would like to do that, and he came to court with me for that purpose.

THE COURT: Are you through?

MR. COHEN: Yes, sir.

THE COURT: Didn't you say something about his contact with the case and his work on the case to some extent?

MR. COHEN: I say he is in charge of the compensation claims department which made the medical and maintenance payments to Mr. Anderson.

THE COURT: Yes.

MR. COHEN: But I think in large part, if not altogether, those payments were made before Mr. Ardizzone came to the company.

THE COURT: Yes. But didn't you also say to me that he had under his jurisdiction this particular case --

MR. COHEN: Yes, he's in charge of the department that has the file.

THE COURT: And he had contact with that file.

MR. COHEN: It is his department that has that file. It comes within that department, yes sir.

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THE COURT: All right. All right, I wanted the record to show that.

MR. COHEN: I think I am accurate in that.

THE COURT: In your presence. Out. Out. Stay outside.

[Mr. Ardizzone leaves the robing room]

THE COURT: Let the record also show that in further discussion in the robing room Mr. Danahar revealed that it has been sometime since he went through the entire deposition and that he would like very much to have an opportunity to read it before he states his position in opposition to Mr. Cohen's offer of the deposition into evidence in its entirety. And I have said that he may have that opportunity, and that we will let Mr. Anderson step down until Mr. Danahar has completed the reading of the deposition during luncheon, and in the meantime we should go on with some other phase of proof.

That is it, is it not? That is the way it stands?

MR. DANAHAR: Yes, except this, your Honor: If you recall yesterday I was just about to put in my proof on lost wages of the plaintiff. If you will recall I asked a question of what the pay of a deck hand was, and so on, and you suggested, well now, don't go into that at this time, get together with Mr. Cohen.

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THE COURT: Because that is always done almost without exception.

MR. DANAHAR: Yes, sir. So that is the only part of my case that I want to put in, the lost wages of this man up to the present.

THE COURT: Well, Mr. Cohen is not going to object to it, are you?

MR. DANAHAR: Well, I spoke to him about that this morning and we got nowhere.

MR. COHEN: I just received Mr.Anderson's weekly earnings record with Great Lakes. I have them by week, by quarter and by year. He started to work for Great Lakes in 1968. I have every cent he made while working with us from that time up until the present. I would expect that those records could be offered in evidence and the figures would speak for themselves.

MR. DANAHAR: Well, it's more than that, your Honor. It's a question of establishing how long he was out of work after the accident, immediately after the accident, which was approximately nine months, and what his lost wages were during that time.

THE COURT: Well, if he doesn't want to stipulate we are just going to have to spend time putting the proof in. If he won't give you what you think you want, then go

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ahead with your proof, that's all.

MR. DANAHAR: It's as simple as that.

THE COURT: Sure it is simple, but he doesn't want to do it. That's it. And so you go ahead with your proof. It's not the first time I have had it. One would think that a thing like that would take a little extra time and counsel could work out something, if not all of it, most of it, and say to the Court, this much we are prepared according to our inquiry to concede on this issue; on that issue we have doubt and, therefore, I can't enter into any stipulation.

In fact, I am not going to allow Mr. Cohen to decide whether he is going to fulfill what the Court requested. I am going to direct that he state on the record at the appropriate time before the close of today to what extent he will stipulate with respect to the issue of lost wages.

Do you understand that, Mr.Cohen?

MR. COHEN: I understand what your Honor is saying, yes.

THE COURT: Will you do that, sir?

MR. COHEN: Judge, I have a problem in doing that, if I may explain, because this man had a subsequent accident and we haven't questioned him fully about it. He said his hand was casted for fully six weeks, as I recall his

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testimony, and that is during a period of time when I think he may be claiming some loss of earnings.

Now you see I have no problem in stipulating how much he earned in 1968, 1969, 1970, 1971, 1972, each year. I have those records. No problem at all.

The jury can then take those yearly figures and see how much less he earned in any year Mr. Danahar is talking about, just subtract the numbers.

MR. DANAHAR: I wasn't even going to put in the prior years. I was just going to ask him, how long were you out of work from the date of the accident -- when did you first return to work after the accident.

THE COURT: Well, you have already asked him that.

MR. DANAHAR: Right. Then I'm going to ask him, what were you earning at the time of the accident.

THE COURT: Then ask him that.

MR. COHEN: That is an oversimplification, if I may, your Honor, for this reason: These men do not work on a yearly salary. They work, as he said, they work when work is available, and there are times when work is not available. They don't work the --

THE COURT: Mr. Cohen, I ask you to be good enough to sit down with a representative of the casualty company and please tell me to what extent there will be a stipulation

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with regard to this issue and what you can't stipulate I would like you to clearly state it so that we can take proof from the plaintiff. That is all there is to it. That is the best I can do under the circumstances.

I see no reason why a Court has to go through all of this because counsel do not feel inclined to sit down and somehow get this issue resolved. As a matter of fact, it should have been resolved before the trial. It very often is by lawyers who are on the job, so to speak, on both sides. They do not saddle the Court and the jury with a lot of proof on things that are really bookkeeping entries and can readily be conceded.

It is really unfair. I don't say that that is what you intend doing, but that is the net result of what will be accomplished here if there isn't a clear-cut statement with regard to the extent to which a stipulation of that nature can be entered into.

Very well, gentlemen.

MR. COHEN: May I ask Mr. Danahar to stipulate with me to the yearly earnings that Mr. Anderson made while working for Great Lakes? I have those figures. I could show him the data.

THE COURT: That is what you are supposed to get together on.

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MR. DANAHAR: I will stipulate to that.

THE COURT: Certainly you will. All right, gentlemen, you go outside and we will call the jury in shortly.

Let the record show it is now 11:35.

MR. COHEN: May we have a few moments recess, your Honor?

THE COURT: Yes.

[In open court - jury present]

THE COURT: Ladies and gentlemen, there have been many matters that have been discussed in your absence. They deal with legal points, and you have no concern with those. But they do take time, and counsel are just as much as I disappointed that you have to wait.

Now, they have got to do their duty. That is what they are here for. That is what the lawyers were engaged to do. The plaintiff had a right to get his lawyer, the defendant had a right to get his and they have got to fight it out.

In certain cases, especially tort actions, of which this is one, emotions sometimes run high. There is no truth that I have ever known comes out by limpid performance. Truth comes out usually by hammer blows, and that is what the lawyers are here to do.

It is perfectly natural that when the Court makes

a ruling that counsel does not share, counsel has a perfect right to say so on the record because if he doesn't he loses his opportunity. He can't say, I should have.

Mr. Cohen did it and did it respectfully. I have no quarrel with either one of them personally. They are doing their job according to their lights, and the fact that we disagreed, that has been going on from time immemorial.

All we have to bear in mind is that, number one, they must do their job, you must do yours, and I must do mine. I am presiding here and I am the judge of the law, and when I make rulings I don't want anybody to hail them as great pronouncements, but I will not stand for any show of disrespect. That is the reason why I had to call that man from the audience and take him to account.

But, insofar as the lawyers are concerned they are doing their job according to their lights, and so remember you are not trying the lawyers, your concern is with this plaintiff and with this defendant.

Now, gentlemen, after further reflection, Mr. Cohen, do you think that it might be best to give Mr. Danahar a chance to go through more in detail the deposition so that we can make a ruling on your offer of the entire deposition?

MR. COHEN: Yes, sir, I think that would be proper.

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THE COURT: And you would have a perfect right to go on and question this witness with regard to the deposition. If it goes in whole or in part, you have a perfect right to question him and you can do that after Mr. Danahar has had a chance to go through it with the detail that he insists, and properly so.

MR. COHEN: Yes, sir.

THE COURT: So are you still of the opinion that it might be a good idea to let Mr. Anderson step off and come back after Mr. Danahar has decided what position to take with regard to the deposition?

MR. COHEN: Yes, I think that would be a good idea, your Honor.

THE COURT: All right.

Step down, Mr. Anderson.

[Witness temporarily excused]

THE COURT: Mr. Danahar, would you be good enough to call your next witness.

MR. DANAHAR: Yes, your Honor. I will call Mr. Ducey.

camds 45 Ducey - direct

E D W A R D D U C E Y, called as a witness by the plaintff, being first duly sworn, testified as follows:

THE COURT: Mr. Ducey, you have just been sworn and the jury wants to hear your testimony, and I say this to every witness, not just to Mr. Ducey: You are in a courtroom. You must answer questions that are put to you and you cannot talk here the way you would outside. There are rules of evidence, you understand.

THE WITNESS: Yes, sir.

THE COURT: So the rule that the Judge must lay down to a witness is just simply this: Keep your voice up so that they can hear you. Next, answer just the question that is put to you. You don't volunteer anything. You are likely, if you do volunteer, to spoil the whole case, and I will have to have a new trial, we will have to start all over again.

You understand that?

THE WITNESS: Yes, sir.

THE COURT: Thank you.

DIRECT EXAMINATION

BY MR. DANAHAR:

Q Mr. Ducey, what is your occupation?

A I'm a dredge operator on the Dredge 50.

Q Dredge No.50. Is that the dredge that Michael Anderson was also a crew member on in October, 1970?

A Yes, sir.

Q How long have you been a dredge operator?

A Twenty-nine years.

Q Would you tell us what the duties of a dredge operator are? What work he does.

A Well, we operate the machine and when the captain is not there we supervise the operation.

Q In addition, when you say you operate the machine, what do you mean by that?

A Well, the machine in general, the deck work, the bucket, running the bucket up and down, the crane. And we also have the deck mate -- actually I operate the crane.

Q By that you mean you manipulate the controls which control the clamshell bucket?

A Yes, that's right.

Q As to whether it goes up or down; is that correct?

A That's correct.

Q And whether the crane moves from side to side; is that correct?

A That's correct.

Q You do that in a particular place on the dredge, do you?

camds 47 Ducey - direct

A Yes. The operator's cab.

Q And the operator's cab is part of what?

A It's part of the cab body of the overall crane.

Q On what side of the vessel is this cab where you handle the controls?

A On the starboard side.

Q I show you Plaintiff's Exhibit 2-B; can you point out to us the cab that you are referring to, the operator's cab [handing]?

A Yes; it's right over here [indicating]. You can see somebody in there.

MR. DANAHAR: May we have that marked, your Honor, with the letters OC indicating the operator's cab?

THE COURT: Will you do that, Mr. Ducey? Please take your time before you mark it so you don't make any mistakes.

THE WITNESS: It's pretty small, I don't know if you can see.

MR. DANAHAR: Does your Honor wish to see that?

THE COURT: No, not right now.

THE WITNESS: Do you want it bigger?

MR. DANAHAR: I'm afraid it isn't quite clear, your Honor.

THE COURT: Make it larger, that's all. Very simple.

BY MR. DANAHAR:

Q And the letters "OC" you have placed over the top of the cab; is that correct?

A Yes, sir.

MR. DANAHAR: May I show this to the jury, your Honor?

THE COURT: Please show it to the jury.

Q Now, Mr.Ducey, you are familiar with the tugger winch in the Dredge No.50, aren't you?

A Yes, sir.

Q Is this cab that you referred to outside of the cab in which the tugger winch is located?

A Well, there's a bulkhead in-between, it bulkheaded off, yes.

Q So that it's outside of where this tugger winch is located?

A Yes.

Q Now, when you are not engaged in operating the crane and the bucket and so on, is there other work that you do?

A Well, if there's any breakdowns on the machine I get out of the cab and either help or supervise if the captain is not there, whatever it takes to get the machine going again.

camds 49 Ducey -direct

Q Do you also sometimes handle the lines and cables and wires connected with the various winches?

A If the occasion arises, yes.

Q Michael Anderson was a crew member on the No.50 in October of 1970, and you knew him as crew member; is that correct?

A That's correct.

Q How long had you known Michael Anderson?

A In 1970 I guess roughly about two years at that time, or three years.

Q Do you know what status he started out with Great Lakes? That is, what kind of a job he had.

A Well, the first I met him he was a deck hand.

Q Do you know whether or not he advanced himself from deck hand to a higher rating?

A Yes. I don't know exactly what it was, but in the course of the time I was on there we had made him the relief mate, which is the process, you know, taking you from deck hand to the mate's job.

Q Was that before October 1970 that you made him a mate?

A Yes, sir.

MR. COHEN: He said a relief mate, your Honor.

MR. DANAHAR: Relief mate, your Honor.

THE WITNESS: Yes.

Q What was the basis upon which you made him a relief mate?

A Well, generally it's between the operators on the machine, who is the best deck hand, if you need a mate. And if one quits or gets sick, or for some reason leaves the job, we make the most qualified man, or make the recommendation, it's always up to the company and the union, we don't hire or fire, but we make the most qualified man on the deck the mate.

THE COURT: I have heard the answer. Next question.

Q On that basis you selected Mr. Anderson?

A Correct.

Q Now I address myself to the date of October 18, 1970, at which time Dredge No.50 was out at Pier 80 here on the Hudson River.

Were you aboard on that day?

A October 18th?

Q October 18th.

THE COURT: When Anderson got hurt.

A Oh, yes, when Anderson got hurt. Yes.

THE COURT: That was October 18, 1970, it has been established here. But you were there on the day that he got hurt?

THE WITNESS: That's right.

Q In addition to yourself, Capt. De Graff was aboard and Mate Ramos and Mr. Anderson himself and his brother, Bruce Anderson; is that correct?

MR. COHEN: I have to object, your Honor. May we have the witness tell us, instead of counsel telling us.

THE COURT: The objection is sustained. Who was on board that day as you best remember?

THE WITNESS: To my knowledge, Capt. De Graff, Ramos, Mike Anderson, Bruce Anderson, myself and I had an engineer there, but I'm not sure whether it was Norman, my regular engineer, or Howie Hansen, the chief engineer. But I definitely had either one there. I don't recall which one it was.

Q When you say Norman, is that his first name or his last name?

A That's his first name. Norman Hebert is his last name. He's my regular watch engineer.

Q When you reported aboard the vessel was there a work assignment handed out?

A Yes.

Q Who gave the assignment as to what work was to be done on October 18, 1970?

A Capt. De Graff.

camds 52 Ducey - direct

Q What was the assignment that he gave?

A To turn my main hoist wire, my closing wire, end for end.

Q After was the whole crew present when that order was given, or was it just given to you and the mate, or who?

A I don't really know.

Q Was it given to you?

A Yes.

Q And after you received that order what did you do?

A Proceeded to follow what he wanted. I had the engineer start the engines up, it was warmed up and we have to get power to lay the bucket over on the barge he was going to put it on, lay it flat so we have a place to rest it and start turning the wire, take the wire off the bucket.

Q You are talking now about taking the closing wire off the drum in the cab and bringing it down to the deck; is that what you're talking about?

A Yes. Well --

Q When you first start?

A Yes.

Q Now, who was engaged in that operation of taking the closing cable off the drum from the cab to bring it down to the deck?

A Myself, Ramos and the two Anderson brothers.

Q After you got it down to the deck what were you going to do with it?

A Take the end that was on the bucket and pull it back up to the boom and put that in on the hoist drum, close wire drum.

Q And the end that had been on the closing wire drum, what did you do with that?

A That gets through the boom, that goes on the bucket.

Q There came a time when it was necessary to bring this closing wire back up through the derrick and down to the drum and the cab; is that correct?

A That's correct.

Q Now at this point how many men were involved in that operation?

A To start with the job at this point I still had the four men including myself.

Q When you started the job.

A When I --

Q And then did something happen after that?

A Yes. We got ready to pull the wire back up, Capt. De Graff come and took Brucie Anderson away from me and put him cleaning up on the port side of the dredge there. And if I may clarify something, Judge --

THE COURT: I wish you would.

THE WITNESS: This was a Sunday, this is not a normal workday. This is a maintenance day.

THE COURT: Yes.

THE WITNESS: So therefore the dredge wouldn't be in operation, and we just had a maintenance watch aboard.

THE COURT: Yes.

Q So that left you with how many men to complete this operation?

A Two and myself, three men.

THE COURT: Would you mind giving the names, please, even though it is repetitious?

THE WITNESS: Yes. Myself, Ed Ducey, Artie Ramos and Mike Anderson.

THE COURT: All right.

Q Where did Mike Anderson go in connection with this operation that you were starting?

A He went up into the crane where the tugger motor was located.

THE COURT: Mr. Ducey, what do you call that particular enclosure as distinguished from the other enclosure that you referred to? Is there a name for it?

THE WITNESS: It's just a cab body. A cab body as far as I know.

camdc 55 Ducey - direct

THE COURT: And where you operate isn't that also a cab body?

THE WITNESS: That's still -- no, sir, that's still part of the cab body itself, but it's bulkheaded off. It's the operator's cab in the cab body.

THE COURT: Fine. Now I have got it.

THE WITNESS: It's all one unit.

THE COURT: Yes.

BY MR. DANAHAR:

Q Where this drum, this closing wire drum is located and where the tugger winch is located, that is referred to as the cab; is that correct?

A It's the cab body.

THE COURT: All right.

Q The cab body. Now, Mr. Anderson was up in the cab body; is that correct? And what was his job supposed to be up there?

A To operate the tugger motor to pull the closing wire back up through the boom shivs.

Q And where did you remain?

A I was still down on the deck of the scow where the bucket was located.

Q And where was Ramos?

A He was there with me, as far as I can recall now.

Q When Anderson was up in the cab --

THE COURT: Please make it clear. We all know --

MR. DANAHAR: The cab body.

THE COURT: Michael Anderson.

MR. DANAHAR: That's right. Excuse me, your Honor.

Q When Michael Anderson was up in the cab body, and while he was standing at the tugger winch to operate it, would it be possible for him to see out on deck?

A No, sir.

Q Would it be possible for him to see either you or Ramos down on the scow?

A No, sir.

Q What is the only way that he could have seen you and Ramos down on the scow?

A As I explained, this was not an ordinary day, this was a maintenance day and we have to follow the orders to the maintenance. Ordinarily we --

MR. COHEN: If your Honor please, I don't believe we are getting a responsive answer to a question which was, what was the only way he could see.

THE COURT: The objection is overruled. Go ahead, Mr. Ducey.

A The only way he could see, if I had another man up in the crane to give him a visual signal that he took

camds 57 Ducey - direct

from the man on the deck that it was all right to go ahead on the wire.

THE COURT: But there was no such person on that --

THE WITNESS: No, sir.

THE COURT: Is that right?

THE WITNESS: That's right.

Q And this other man, where would he be stationed up in the cab body to give the signals, to accept signals?

A I had told Brucie to go up there.

Q Yes?

A He would have been to Mikie's left at the doorway.

THE COURT: But he wasn't there?

THE WITNESS: No, sir.

THE COURT: He had been sent by the captain to do a paint job?

THE WITNESS: That's right.

THE COURT: And by Brucie, you mean Bruce Anderson?

THE WITNESS: Yes, sir.

Q Mr. Ducey, on prior occasions before this date of October 18, 1967 when this same type of operation was involved, and particularly that part of the operation where you were going to bring the closing wire back up from the deck back up to the drum into the cab body, did you ever

camds 58 Ducey - direct

have three men in that cab body in connection with that operation?

MR. COHEN: Just a moment, please. If your Honor please --

THE COURT: It is leading. The objection is sustained. It is leading.

How many men, etc., is the way you do it.

Q On prior occasions before this date of October 18, in connection with this same operation of bringing the cable back up, how many men were used in the cab body in connection with bringing the wire up?

THE COURT: Now hold it. Whenever the lawyer gets up you have to wait. Yes, Mr. Cohen?

MR. COHEN: If your Honor please, I believe that the question is improper unless it first be established that there was a standard operating procedure, which I think was an objection --

THE COURT: Yes, the objection is sustained. Was there, etc.

Q Well, was there a standard operating procedure --

THE COURT: For that kind of operation which was in progress on the day that we are concerned with, to wit, October 18, 1970, when Michael Anderson got hurt?

Was there a standard procedure with regard to

camds 59 Ducey - direct

that kind of operation?

THE WITNESS: Well, the only way I can answer that, to my knowledge in my experience on these type of cranes the procedure that was followed there was always at least two men in the crane, the body of the crane at the time that the wire was coming back through. At least two.

THE COURT: And what would they do, sir?

THE WITNESS: Well, one man would operate the tugger and the other man would hold the wire and feed it on the drum, on the tugger straight until you had a strain on the wire. And once you had the strain on the wire theoretically it would follow and he would stand in the door and watch the signals from the man that was watching the wire that you were reeving up through the boom.

Q Were there ever on any occasions three men doing the same operation?

THE COURT: In the cab body?

MR. DANAHAR: In the cab body.

THE COURT: Performing that identical type of operation.

A Any day but a Sunday I would have had three men, I would have had my engineer up there. On a normal working day.

THE COURT: Are you saying that that type of

operation would, according to standard procedure, require three men in the cab body, but because it was a Sunday you made do with two men? Is that what you're telling us?

THE WITNESS: No, sir. I didn't think that's what he asked me. I'm saying that we never had no less than two, but he asked me if on occasion I ever had any more. I said, yes, that I always had three on any day but a Sunday. Because my engineer has regular maintenance to do on other machinery.

THE COURT: Forgive me, but I don't know the first thing about your work.

THE WITNESS: Yes, sir, I understand.

THE COURT: And I want to learn. I want to understand. I have got to talk to this jury at the right time, and I am a little bit confused.

Would you break that down a bit more for me so as to make it clearer?

THE WITNESS: Yes, sir. I'll have to go into a little more detail.

THE COURT: Go ahead.

THE WITNESS: We have in the cab of the crane our own generator and our own air compressor, and we have a supply tank in there which supplies the air to the controls which are electric over air.

Well, down below we also have two bigger air compressors and two bigger supply tanks, and we can run this up through the cab through a collector in the center pin to give us more air supply into the supply tank because these air tuggers take an awful lot of air. And we can't keep the tank supplied with air and keep that tugger going full force at all times to maintain the proper power you need to pull that wire back through the shiv.

So, on a normal day I would have, I mean a working day, I would have the engineer up there in case the air supply got low on that tank in the cab. I would have him switch over to give me supply from the air compressors down below. That's why any day but that day, and this day we had the air coming from the lower engine room up into the cab.

THE COURT: Thank you, sir.

Next question.

BY MR. DANAHAR:

Q Mr. Ducey, what are your average yearly earnings as an operator on a dredge?

MR. COHEN: If your Honor please, I am going to object. I don't see the relevancy to the issues in this case.

THE COURT: Sustained.

camds 62 Ducey - direct

MR. DANAHAR: Well, your Honor --

THE COURT: Mr. Danahar, there is another way to do it, and I am not going to spend time with the jury trying to get what this witness's earnings are.

Next question.

Q What is the rate of pay, the daily rate of pay of all operators?

MR. COHEN: I object to that, if your Honor please.

THE COURT: I will allow it. Generally speaking, what is the rate of pay of all operators at the present time, and then tell us what it was in 1970.

THE WITNESS: Well, right today it's $69.94, I believe. What it was back in 1970 I really can't -- I don't know offhand.

THE COURT: Yes. That $69 plus refers to what?

THE WITNESS: That's the wages, plus $5.50 a day subsistance based on a five-day period.

THE COURT: All right. Thank you.

Q Approximately what was it back in 1970?

THE COURT: If you don't remember, say so.

THE WITNESS: I couldn't say, because I really don't --

THE COURT: You can leave that for bookkeeping entries. I said that yesterday, and I wish you would carry

camds 63 Ducey - direct

out what the Court asks.

Next question.

Q Mr. Ducey, you are a member of a union; is that correct?

A That's correct.

Q What is the union?

A Local 25 of the Operating Engineers.

Q Is Mr. Anderson a member of the same union?

A As far as I know, yes.

Q What are the steps in the progress of a man like Anderson who is a relief man? How would such a person be advanced from relief mate to steady mate, and so on up?

A Well, this is kind of complicated work and a kind of complicated situation. I would only have to answer my own opinion on it, my own experience.

THE COURT: Yes.

A I can't answer for anybody else.

THE COURT: Generally speaking, what is the general way it operates?

THE WITNESS: Well, if we got a deck hand that's pretty adapted to the work and he does what we tell him to do and in general he can handle this type of machinery that the mate has to handle on the deck, which is really more dangerous than the man in the cab has to operate because

he's got other men around there, well, we see how he handles these winches, the different types of power winches and all, and he's adept at the work and he can do the work safely and most efficiently without us having to get in there all the time, well then we recommend him to the captain of the machine to make him the next mate when the occasion arises. That's my --

Q Make him a steady man?

A Right. At the first opportunity.

THE COURT: Isn't that the same kind of test that you apply from one position to another? Whether it's a fellow handling sandbags and you want to make him a deck man, you just have to ask yourself from what you observed whether he could do a job as a deck hand, then you ask when he is a deck hand, you ask yourself could he do the job as a mate from what you have observed with regard to the way he conducts himself, or the way he handles machinery and that is the basis on which you give him his opportunity to go up? Is that what you are saying?

THE WITNESS: That's what I base it on, yes, sir.

THE COURT: And the next post is the same thing; is that right? From post to post? The merit, the ability, the capacity?

THE WITNESS: Well, he has to be able to handle

the men he's working with too.

THE COURT: That is a good point.

THE WITNESS: He has two other deck hands with him, and when the operator is in the cab operating the machine he is to oversee all the deck work or anything that goes along with the operation of the machine.

THE COURT: Yes.

THE WITNESS: You can't stop the machine and walk down and say, do this or do that. He has to be qualified and be able to tell these other two men what to do.

THE COURT: All right. There it is. Is there anything else now?

MR. DANAHAR: Yes, your Honor.

Q And to advance from mate to operator you do the same thing, you observe the --

THE COURT: He said so. Please, I --

MR. DANAHAR: I think there is a little more to it, your Honor, if I can develop it.

THE COURT: All right, go ahead.

Q After observing a particular individual who you think might be able to become an operator, then what do you do in order to qualify him to become an operator?

A We follow the same procedure that we follow in making him a mate.

camds 66 Ducey - direct

Q But isn't there some training involved in that?

A Oh, yes.

Q To be an operator?

A Same training as you have to move from deck hand to a mate. You have to bring him up to the operator's cab and familiarize him with the operation of the controls up there.

Q Do you permit him to manipulate the controls and so on, handle the gear?

A We have to get permission from the company to do this.

Q But you do do that?

A Yes, sir.

Q How long did you know Mr. Anderson before this accident?

A Like I say, I think just a couple of years, I imagine.

Q And you worked with him many times over those years?

A Oh, yes. I can't recall dates of them, but he must have been my deck hand for about a year at least, roughly.

THE COURT: You observed his behavior and his conduct and the way he went about the disposition of his

assignments; is that right?

THE WITNESS: Yes, sir.

THE COURT: All right, next question.

Q Based upon your observations of Mr. Anderson and the way he worked and so on, what is your opinion as to how he would have advanced?

MR. COHEN: Objection.

THE COURT: On what ground?

MR. COHEN: It is highly speculative and conjectural, calling for too many variable factors.

THE COURT: The objection is overruled.

Q You may answer.

A Well, I wouldn't have hesitated to break him in as an operator myself.

Q And in your opinion and with relation to the year 1970, when do you think that he would have reached the stage where he would have been broken in as an operator?

A This is something I can't answer because I never did start to break him in, so -- some men take longer than others, others never make it.

THE COURT: There is the answer. Next question.

Q Do you know of any operators of the approximate age of Mr. Anderson?

MR. COHEN: Objection.

camds 68 Ducey - direct

THE COURT: The objection is sustained.

Q In becoming an operator --

THE COURT: The jury was not born yesterday. The point you are making is known to them. They know his age. They can reason out whether or not at his age he was making fairly good progress.

Do you have to have proof on that? Next question.

MR. DANAHAR: Well, what I am trying to develop, your Honor --

THE COURT: Please, counsel. The Judge has said it and that's it. You automatically have an exception.

Q Is age a factor in deciding whether or not a man becomes an operator?

THE COURT: Sustained. He just got through saying if he went through the steps to his satisfaction he would have made him an operator, or recommended him so.

Q Did he have to spend any particular period of time as a steady mate before being made an operator?

A No, sir.

THE WITNESS: May I say something, Judge?

THE COURT: Surely.

THE WITNESS: I don't know who is going to be made the operator, I don't know what he is talking about now.

camds 69 Ducey - direct/cross

THE COURT: I will put it to you very frankly. In 1970 if Michael Anderson showed the competency, even though he was a young man and you knew his age from the records, would you have recommended that if he satisfied you as to his competency, would you have recommended he be made an operator despite his youth?

THE WITNESS: Yes, I would have. Yes.

THE COURT: All right. Next question.

MR. DANAHAR: No further questions, your Honor.

THE COURT: All right. We will continue with this promptly, ladies and gentlemen, at 2:00 o'clock.

Announce a recess, please, Mr. Clerk, until 2:00 o'clock.

[Luncheon recess]

[In open court - jury present]

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. COHEN:

Q Mr. Ducey, on October 18, 1970 you were the operator on Dredge No.50; is that correct?

A Yes.

Q And the captain was Capt. De Graff?

A Correct.

Q For how long before that time had you been the

operator on that dredge?

A Well, to answer it right I had been on it previously. I had been on it in 1967, then I came back on it, I left there and I came back on it in June of 1969.

Q For how long had Capt. De Graff been the captain on that dredge before October 18, 1970, to your knowledge?

A I really don't --

MR. DANAHAR: I object to that, your Honor.

THE COURT: He doesn't know. Next question.

Q After October 18, 1970, did you continue on on Dredge No.50 as the operator?

A Yes.

Q Are you still the operator there today?

A Yes.

Q Did Capt. De Graff continue on as the captain?

A He continued till this past -- first of July he retired, I believe. Or went out on disability, I don't know which it was.

Q Upon his retirement this past July do you know where he went?

MR. DANAHAR: Objection, your Honor. I don't see the materiality of this, where the captain went upon retirement.

THE COURT: Sustained.

camds 71 Ducey - cross

Q Do you know if Capt. De Graff is still in this area, or whether he moved out of this area?

THE COURT: Do you know, yes or no?

MR. DANAHAR: Objection.

A No, sir, I don't know.

THE COURT: Next question.

Q I believe you said that your duties in addition to operating the machine were to supervise whatever operations were going on when the captain was not present to supervise himself.

A That's correct.

Q In connection with the operation that was going on on October 18, 1970, which was to reverse the closing cable, was the captain standing by supervising that operation?

A No, he wasn't standing by.

THE COURT: Well, the answer is no, is it, sir?

THE WITNESS: No.

THE COURT: Next question.

Q Would that mean then that since he was not there supervising it that you were supervising that operation?

A Not in the sense you put it. I was following the captain's orders.

Q What exact orders did the captain give you? Tell us everything that he said to you by way of an order.

A Sunday is the set maintenance day there, if you're not operating the machine --

Q I'm sorry, I don't want to interrupt. All I want you to tell us is exactly what he said to you and everything that he said to you by way of an order.

THE COURT: As you best remember.

MR. COHEN: Absolutely, sir.

THE COURT: On the day of the accident to Anderson.

A I can't recall everything he said. All I know is I had the order to end for end the closing wire.

Q That was the substance of the order he gave you?

A To the best of my knowledge right now, yes.

Q You understood what that meant?

A To turn the wire.

Q You have done it plenty of times before?

A Yes, that's correct.

Q Where was the captain when he gave you that order?

A The captain? I don't recall.

THE COURT: Next question. If you don't recall, that's it. Is that your sworn testimony?

THE WITNESS: Yes, sir.

THE COURT: All right. That's all. Please don't make a speech every time.

All right, next question.

Q Wherever it was, did the captain then leave that area?

THE COURT: If you remember.

Q The captain wasn't present. I can't answer these questions.

THE COURT: All right, then there it is. I don't know. Is that your answer? Is that not your answer?

THE WITNESS: It's my answer in a way, Judge. He left and came back. Now, he left and came back.

THE COURT: All right, he left --

THE WITNESS: He goes away and he comes back. He makes out reports. I mean, I can't say where he was from one minute to the next.

THE COURT: That's it. Next question.

Q And when he makes out reports he has some quarters aboard the dredge in which he has a place to make out --

A I don't know if he was making out reports or what he was doing. I am saying this is his procedure, he doesn't have to be there at all times.

Q All right. And just so we understand correctly, when he is not there the supervision of the job is on your shoulders; is that right?

A Yes, sir.

Q Now, the job involved, as I understand it, and

camds 74 Ducey - cross

you can correct me if I'm wrong, bringing the entire closing wire down onto the scow so that the end could be reversed and then hooking up to the tugger winch cable that was also on the scow the end of the closing cable that had previously been on the clamshell bucket; right?

A That's correct.

Q Were you on the scow when the end of the closing cable that had previously been attached to the clamshell bucket was now attached to the Chinese Finger and tugger winch cable preparatory to being brought back?

A As far as I know I had to be in the location.

Q Well, you are saying you had to be. Now I'm asking you --

A I probably was. I don't know where I was.

THE COURT: Wait a minute. Now look, one of the worst things that happens is when you go into probabilities, you see. The law doesn't want probabilities. The law wants what you remember. If you don't remember, you say, "I don't remember." That's all, sir. Do you understand that?

THE WITNESS: Yes, sir.

THE COURT: I am not supposed to let you go on and talk about probabilities, otherwise I might as well step off the bench.

Next question.

MR. COHEN: Thank you, your Honor.

Q Now, do you remember where you were at the time that the closing cable was attached to the tugger winch cable on the scow preparatory to the closing cable being brought back?

A The deck scow alongside the dredge.

THE COURT: Next question.

Q Is the deck scow alongside the dredge the scow on which those cables were at that time resting?

A The bucket, yes, sir.

Q The bucket. Now, how about the cables that we are talking about?

A The closing cable was there also.

Q All right. And the tugger winch cable, or, the end of the tugger winch cable to which that closing cable would now be reattached in the reverse direction was also present on that scow, wasn't it?

A Yes, sir.

Q Who else was with you on the scow at that moment in time?

A To the best of my recollection, Artie Ramos and Bruce Anderson.

Q Who actually connected, of the three of you, the closing cable to the tugger winch cable on the scow at

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that moment in time?

A I don't know. I can't recall that.

Q Did you do it yourself?

A I don't know.

Q By the way, were those two cables connected on the scow with the Chinese Finger?

A Yes, that's the normal.

Q And after the Chinese Finger was used to connect those two cable on the scow did you remain on the scow?

A Yes.

Q Where did Artie Ramos go, if anywhere?

A Best of my knowledge, on the scow.

Q At the time that the Chinese Finger was used to connect those two cables on the scow did you see Capt. De Graff around anywhere?

A Not at that time, no.

Q When did you next see Capt. De Graff? How much longer?

A I can't estimate the time, but just from the time that we hooked the Chinese Finger to the wire, I told Mikie and Brucie --

Q I didn't ask you what you told them.

MR. COHEN: I move that be stricken.

THE COURT: All right.

A I told --

THE COURT: Wait a minute, Mr. Ducey. I am sure you want to give us your testimony, but will you please listen and understand that if you don't remember or you don't recall, that is all you are supposed to say. He asks you when did you next see the captain. If you don't have a memory on it, just say, "I don't remember." That's all.

If you do have a memory, then you tell us. Because a lot of things, Mr. Ducey, I can't tell you some of the things I did a month ago. I have got to take the papers and take the stenographic record and refresh my recollection, and I was the Judge in those cases. You just can't remember everything.

Now, the question is, do you remember how long it was before you saw the captain again? That's all he asked you.

THE WITNESS: The time, no.

THE COURT: All right. Next question.

Q After the Chinese Finger was attached to the two cables we have been talking about on the scow, am I correct in understanding that the next step in the operation would have been to bring in the tugger winch cable so that that could take the closing cable along with it?

A That's correct.

Q That would have been the next thing to be done?

A Correct.

Q Now approximately how long a period of time elapsed from the time the Chinese Finger was used to connect those two cables on the scow to the time that you learned an accident had happened to Mr. Anderson?

A I don't know.

Q Could you give us any estimate at all? Was it a matter of minutes or a half hour an hour?

A I don't know.

Q From the time that you had last seen Capt. De Graff before the connecting of those two cables with the Chinese Finger did you see him at anytime thereafter before the accident to Mr. Anderson?

A Yes.

Q Where was that?

A He came up to the bow of the dredge which --

THE COURT: No. Where? Where?

A On the bow of the dredge.

THE COURT: There is the answer. Next question.

Q Now, as he was on the bow of the dredge, where were you?

A On the bow of the scow.

Q How far apart were you?

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A Five feet.

Q Five feet?

A Five feet.

Q And this was before the accident to Mr. Anderson; is that correct?

A Correct.

Q Do you know approximately how much before?

A No, I don't.

Q Did Capt. De Graff have any conversation with you at that time?

A No.

Q Did he remain on the bow of the dredge?

A No.

Q Where did he go?

A He took Brucie Anderson with him and put him to work on the port side of the dredge.

Q Capt. De Graff had no conversation with you, you said; is that right?

THE COURT: At that time.

Q At that time?

A No.

MR. DANAHAR: Your Honor, may we have the word "conversation" defined?

THE COURT: Yes.

MR. DANAHAR: That could mean a lot of things, "conversation."

THE COURT: That is right. Did he say anything to you that you remember at that time?

THE WITNESS: Yes, to me personally. He told me he was taking Brucie, that he wanted it cleaned up under the springline fairlead shiv to clean it up, and I said I need Brucie because we are going to start running the closing wire back to the drum.

THE COURT: Did the captain say anything to that?

THE WITNESS: No, sir.

THE COURT: When you said you need him?

THE WITNESS: No, sir. He just says, come on with me, Brucie.

THE COURT: And in your presence the captain said to Bruce Anderson, come on with me?

THE WITNESS: Yes, sir.

THE COURT: Next question.

Q Now, where was the engineer, Mr. Herbert at that time?

A I don't know.

Q Didn't you testify earlier on direct examination that Mr. Herbert was doing some maintenance work, he had to do some maintenance work on the --

A No, sir. I said I didn't know which engineer was there that Sunday, Mr. Herbert or Howie Hansen. I believe I said they were down below doing their maintenance work.

Q Right. I'm not quarreling with you about the name of the individual, but there was an engineer there?

A There was an engineer on board the dredge, yes, sir.

Q Right. And your best memory, and your testimony today is that the engineer was down below doing maintenance work. That is what you just said; is that right?

A As far as I knew, yes.

Q As far as you know. All right.

Now, you told Capt. De Graff, according to your testimony, that you needed Bruce Anderson?

A Yes.

Q And he took Bruce Anderson with him, you say?

A Yes.

Q Did you ask the engineer to stop his maintenance work, to come and give a hand with this operation on the tugger winch cable?

A No.

Q At the time that Capt. De Graff had this conversation with you where was Mike Anderson?

A I don't know.

Q Had the taking in of the tugger winch cable been

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done by that time?

A No.

Q How soon thereafter did the taking in of the tugger winch cable begin?

A I don't know.

Q Can you estimate a matter of minutes, or --

A Mr. Cohen, I don't really know. I mean --

THE COURT: All right. There it is. Stick to it, if that is your testimony under oath.

Next question.

Q After that conversation that you talked about with Capt. De Graff, where did you go?

A I stayed on the deck scow where the bucket was.

Q Was Mr. Ramos with you?

A Yes, sir.

Q By the way, was the bucket at the forward end of the deck scow?

A I don't know. It was on an end.

Q In other words, what I am driving at is the place you were at when you say you had this conversation with Capt. De Graff, was that the same place as the area where the bucket was?

A Yes.

Q And Mr. Ramos was with you in that area?

A Yes, to my knowledge.

Q Thereafter did somebody start to operate the tugger winch cable so as to bring it back in?

A Yes.

Q And at that time you and Mr. Ramos were the only two men on the scow; is that right?

A That's correct. To my knowledge.

Q Did you in some way give a signal to the man operating the tugger winch cable as to when to begin operating that cable?

A No.

Q Was there some way in which the man who was operating the tugger winch knew when and how to begin?

A Just -- you confused me with these questions a little bit. Now I told Mikie to go up there and start pulling the wire in, if that's what you mean. That's the only signal I gave, voice, to go up and start pulling the wire in.

Now, when I gave him to do this, before or after Capt. De Graff was there I really don't know.

Q Well, you certainly didn't tell Mike that he could go to start pulling the wire in before the Chinese Finger connected the two cables, did you?

MR. DANAHAR: I object to that, your Honor.

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It is argumentative.

THE COURT: Can you answer it, Mr. Ducey?

THE WITNESS: I don't believe so, no.

THE COURT: Next question.

Q It would only have been after the Chinese Finger connected the two cables that you would have been in a position to tell Mike to go ahead and start taking it in; is that correct?

A That's correct.

Q But you testified, I believe a little while ago, that the only people on the scow at that time when the Chinese Finger was connected were you, Mr. Ramos and Bruce Anderson; is that correct?

A That's correct.

Q And then I --

A To my knowledge.

Q That's right. Then Mike Anderson wasn't present at the time the Chinese Finger was connected.

MR. DANAHAR: I object to this, your Honor.

A I had already --

THE COURT: Wait a minute. He doesn't want you to answer, you see. If you answer, why then there is no purpose in his getting up.

Yes, Mr. Danahar?

MR. DANAHAR: I object to the question, your Honor. It is argumentative.

THE COURT: The objection is overruled.

What is the pending question, Mr. Court Reporter, please, in a loud voice if you don't mind.

[Pending question was read]

MR. DANAHAR: Your Honor, I also object unless he defines "present." Does he mean present on the scow --

THE COURT: Let us see what the answer is.

Can you answer that, sir?

THE WITNESS: Yes. My answer was this: I assume that I had already -- or I had already given Mikie the job to run the tugger winch in the cab. To my knowledge I don't know whether he was still on the scow or he was in the cab because I had assigned him this job which I generally gave him this job to run this particular tugger.

THE COURT: And when you say Mikie, you mean --

THE WITNESS: Mikie Anderson.

THE COURT: The brother of this --

THE WITNESS: No. Mike here [indicating].

THE COURT: I beg your pardon. Of course.

Q My question, sir, did not concern itself with when you gave Mike the assignment --

THE COURT: A little louder, Mr. Cohen.

MR. COHEN: I am sorry, your Honor.

Q My question, sir, is not related to when you gave Mike the assignment. My question is, when in point of sequence in this operation did you tell Mike that he could go and start to operate the tugger winch cable in order to bring the closing wire back in?

A I don't know, but it couldn't have been until after the Chinese Finger was hooked on.

Q And in what fashion, after the Chinese Finger was hooked on, did you get the word to the man at the tugger winch that he should start to bring it in?

A He's standing on the port side of the rig, there's a platform on the crane on the port side opposite the boom, and when everything is hooked up he was standing there, and that's the only way you can tell the man to go ahead.

Q Is that what happened on this occasion, do you remember?

A As far as I know, yes.

Q When you say as far as you know, do you have doubts?

A And my recollection.

Q You are saying that Mike Anderson was standing not inside the cab, but on the port side?

A I say as far as I know.

Q All of your testimony is as far as you know.

A Well, I don't know. I don't know then.

Q Well, can you tell us where Michael Anderson was at the time when you say you gave him the word to actually start operating the tugger winch to bring those cables back in?

A I don't remember.

THE COURT: All right. Next question.

Q Can you tell us in what fashion you gave him the signal or the word to start operating so as to bring those cables back in.

MR. DANAHAR: I object to the form of that question, your Honor. I don't know what that word "fashion" means.

THE COURT: Yes. Do you remember how you said it to him? If you don't remember, say so. If you do, say so.

THE WITNESS: Voice communication.

THE COURT: What did you say, if you remember.

THE WITNESS: "Go ahead on it."

Q You yelled?

A Yes.

Q Is that the way people generally communicated on the dredge?

A No.

Q They don't yell to each other?

Q Do you also have a public address system on the dredge that you can use?

A Only when the crane is in operation.

THE COURT: And it was not in operation that day?

THE WITNESS: No, sir.

Q You and Mr. Ramos continued to remain on the scow; is that correct?

A That's correct.

Q Did the tugger winch cable that was on the scow start to come up?

A Yes.

Q About how long a period of time elapsed, went by, from the time that you gave the signal to the tugger winch operator to start taking in, to the time that you saw the tugger winch cable on the scow start to come up?

A I don't know.

Q Was it a short period of time? A matter of seconds?

MR. DANAHAR: Your Honor, he said he doesn't know.

THE COURT: Objection sustained.

Q About how long a period of time went by after the tugger winch cable started to come up until the time you learned of an accident?

A I don't know.

Q Approximately how many feet long was that tugger

winch cable?

A Two hundred.

Q Approximately how long a period of time does it take, based on your experience, to get the entire two hundred feet wound back onto the drum of the tugger winch?

MR. DANAHAR: Objection, your Honor. That would involve so many variables I don't think it's a proper question.

THE COURT: There is a lot in the objection. Can you tighten it up a little bit, Mr. Cohen, so that there won't be these possible variables?

MR. COHEN: Yes, your Honor.

Q Mr. Ducey, how many times have you seen this very same operation being performed?

A Quite a few.

Q You say "Quite a few." Can you give us --

THE COURT: That doesn't tell us anything.

THE WITNESS: I don't know.

THE COURT: A hundred? Fifty? A thousand?

THE WITNESS: I don't know.

THE COURT: All right.

Q On the basis of your experience in observing this same kind of operation can you tell us within certain rough perimeters, or boundaries, approximately how long

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it takes for the tugger winch to completely roll back and get on its drum, the tugger winch cable, when it's pulling in the closing wire?

MR. DANAHAR: If your Honor please --

THE COURT: I am sorry. Mr. Court Reporter, would you read the last couple of questions and answers, if you don't mind.

[The record was read]

THE COURT: Thank you, Mr. Court Reporter.

MR. DANAHAR: Objection, your Honor, for the very same reason that --

THE COURT: Objection sustained. It does not tighten it up.

Q The tugger winch is located in the cab of the Dredge 50, does that have any function other than to bring in the cables of the closing wire and the holding wire when they are being changed or reversed?

A Not to my knowledge.

Q That is its sole function, just to be used in connection with that kind of an operation; is that right?

A As I know it, yes.

Q And the closing cables that are used on the Dredge 50, are they pretty much standard in size?

A Yes.

Q And over the years that you have been observing that kind of tugger winch bringing in that kind of cable in this same kind of an operation, are you able to tell us approximately how long it takes for the tugger winch to bring it back in?

MR. DANAHAR: Same objection, your Honor.

THE COURT: I will take it. The objection is overruled.

A This certain tugger winch in this certain dredge you are talking about?

Q That is what I am talking about.

A Well, it has varied. The only way I can answer it truthfully, it has varied from maybe ten minutes to two minutes.

Q All right.

A Depending on the air pressure.

THE COURT: All right, there is the answer. Next question.

Q Well, actually what I want to know is this: What is the circumference of the drum of the tugger winch? Approximately.

A The circumference of the drum? Maybe twenty-four inches, roughly.

Q So that would it be fair to say that when you

have three turns of tugger winch cable around that drum you have got a length of cable that is three times twenty-four inches?

A Yes.

Q That would be about six feet out of the two hundred; is that correct?

A Yes.

Q Now, as the tugger winch cable started to go up, what were you and Mr. Ramos doing on the scow?

A Making sure the wire was coming through the shivs on the bucket and on the scow clear without getting out of the shivs on the bucket. This wire is woved through a bucket we were pulling.

Q Which wire was woven through the bucket? Was it the tugger winch cable wire or the closing wire that was --

A The closing wire.

Q Now, before the closing wire moves the tugger winch cable has to first come up; is that right?

A Correct.

Q Now, at the beginning of the operation, working the tugger winch, the first cable that would start to move would be the tugger winch cable; am I right?

A Yes.

Q How much slack of the tugger winch cable had you

had on the deck of the scow, approximately?

MR. DANAHAR: At what time, your Honor.

THE COURT: Yes.

MR. COHEN: At the same point and time we are talking about, your Honor.

THE COURT: The same point and time. If you remember.

A It varies.

Q No, on this occasion, that is all I am talking about.

A I don't remember.

Q By slack we mean that quantity of line which is not up in the air, it is lying loose, or, slack on the deck; is that right?

A Correct.

Q And in order to do the operation that was being done you had to have some slack tugger winch cable on the deck of the scow; is that right?

A Correct.

Q Would you estimate that you had more than six feet of slack of the tugger winch cable on the deck of the scow?

MR. DANAHAR: Objection, your Honor.

THE COURT: Sustained.

Q When the tugger winch cable started to come up can you tell me with some degree of certainty just about where on the scow you were standing and where Mr. Ramos was standing?

A No, I can't.

Q From what part of the scow was it that the tugger winch cable started to come up?

A The end of the scow. Whichever end the bucket was on.

Q Is that the end that was near the front of the dredge --

A Yes.

Q [continuing] or the back of the dredge?

A The end near the front.

Q Approximately how long was that scow?

A A hundred and fifty feet.

Q I understand that you can't fix your position and Mr. Ramos' position on the scow at that time?

MR. DANAHAR: I think he has already testified to that, your Honor.

THE COURT: Yes. That is a statement, anyway. Next question.

Q During the time that that tugger winch cable started to come up what were you doing before you learned

of an accident?

MR. COHEN: I phrased that question very badly. May I take it back, your Honor?

THE COURT: Yes. Withdrawn.

MR. COHEN: Withdrawn.

Q Between the time that the tugger winch cable started to come up and the time you heard of an accident what precisely were you doing?

A Pushing the closing wire, feeding the slack into the shiv of the bucket so there wouldn't be too much of a strain on the tugger wire.

MR. COHEN: Your Honor, may I have that answer read back?

THE COURT: Yes. Mr. Court Reporter, would you please oblige us by reading the answer of the witness.

[The answer was read]

BY MR. COHEN:

Q What was Mr. Ramos doing during that period of time?

A To my knowledge he was helping me.

Q And can you explain to us what it was that the two of you were physically doing?

A If I can, if it's the right answer. You drop this wire out of the shiv you're dropping down approximately--

you have 400 feet of inch and a half cable on this scow, 400 feet of inch and a half cable is quite a bit of weight. So it's all coiled all around there, and it takes more than one man to flip the cable up and keep it going straight through the fairlead shiv on the bucket.

Q Now, the fairlead shiv on the bucket would be near the end of the closing cable that was now attached to the bucket; is that right?

A That would be the end.

Q All right. And how long was that closing cable in its entirety?

A Four hundred feet.

Q Going further in toward the dredge after that 400 feet you would have about 200 feet of tugger winch cable is that right?

A Yes.

Q Now, the closing cable was made secure to the clamshell bucket before the signal was given to the tugger winch operator to come ahead with the tugger winch; isn't that true?

A No.

Q No? Was the closing wire cable secured to the clamshell bucket before the Chinese Finger connecting the tugger winch cable and the closing cable was attached?

A No.

Q When did you entend to secure the holding -- I'm sorry -- the closing cable to the bucket? At what point in the operation?

A When it was all pulled, the tugger wire pulled the wire back to the drum, you clamped it on your closing wire drum which is your main hoisting drum.

Q So that after the tugger winch had brought all the tugger winch cable back onto the tugger winch, at which time it would have the end of the closing cable back in the cab near the closing cable drum, at that time you would attach the other end of the closing cable to the clamshell bucket; do I have that correctly?

A No.

Q All right. I thought you said that you would attach the end of the closing cable that was now to be attached to the clamshell bucket, you would make that attachment after the end of the closing cable that was now to go on the closing cable drum, had been brought into the cab?

MR. DANAHAR: I object to the form of that question, your Honor.

A No.

THE COURT: He said "No." Do ycu want to strike it?

MR. DANAHAR: No.

Q Could you please then explain to me once again when it was that the end of the closing cable that was now to be attached to the claimshell bucket was attached?

MR. DANAHAR: Your Honor, I object to this. He has answered that question before and it's just repetition.

THE COURT: The objection is sustained. Next question, please.

Q How did you learn that there had been an accident to Mr. Anderson?

A Just from the screaming.

THE COURT: Next question.

Q From the time that the tugger winch cable started to rise up from the deck of the scow till the time that you heard the screaming had you given any signals to the tugger winch operator?

A I didn't follow that.

Q From the time that the tugger winch cable started to come up from the deck of the scow till the time that you hear the screaming had you given any signals to the tugger winch operator?

A No, sir.

Q During that same period of time had you sent Mr. Ramos to the tugger winch operator with any signals

or directions or instructions?

A No, sir.

Q Did you have any signals, directions or instructions to give to the tugger winch operator during that period of time?

A No, sir.

Q At that point in the operation you were waiting for the tugger winch cable to be taken back up through the shivs on the derrick down through the opening at the top of the cab and back onto its drum; is that correct?

MR. DANAHAR: Objection, your Honor.

THE COURT: Overruled. Is that right?

A Yes, sir.

THE COURT: Next question.

MR. COHEN: I may not have any more, your Honor. May I just check my notes for a moment to see?

THE COURT: Certainly.

MR. COHEN: I have nothing further, sir.

THE COURT: Do you have anything further of the witness, Mr. Danahar?

MR. DANAHAR: I have nothing further, sir.

THE COURT: You may leave, sir.

[Witness excused]

THE COURT: All right, gentlemen, will you step

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up to the side bar so I can learn what is going to be done with the deposition so I can make a ruling so we can go on with the testimony of the plaintiff and get it finished.

[At the side bar]

MR. DANAHAR: Your Honor, I have no objection to Mr. Cohen reading the deposition. I object to it being put in evidence, marked as an exhibit, and I reserve my right to object to whatever questions I deem are objectionable and which were reserved at the time the deposition was taken, except as to form.

THE COURT: Well, you mean to say that you have no objection to Mr. Cohen reading the entire deposition, but you don't want it put into evidence? Is that what you are saying?

MR. DANAHAR: I do not want it marked as an exhibit. Do you see what I mean?

THE COURT: Yes. What do you say to that, Mr. Cohen? Have you any objection to reading the entire depostion?

MR. COHEN: No. I would like to read it, if your Honor please, but I also think it should be marked as an exhibit since it does, among other things, contain the signature of the plaintiff.

THE COURT: Well, that has been conceded. The

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signature of the plaintiff is there, there is no issue on that whatever.

MR. COHEN: For the record, so long as it is being read in its entirety I see no reason why is shouldn't be marked.

THE COURT: That is a matter of accommodation for the Court to rule on, and I know of no law that says I have to have it marked as an exhibit. I will allow you to read it, and he can read it, you understand, from beginning to end. You understand that? Say so.

MR. DANAHAR: I understand that, your Honor, except that we stipulated that all objections except as to the form --

THE COURT: Yes, sir.

MR. DANAHAR: [continuing] are reserved until the time of trial, and I reserved my right to object to those questions.

THE COURT: Well, this is the trial now and he is about to read the deposition and any question that you have a right to object to, you stand up and object. Is that what you mean?

MR. DANAHAR: That's exactly --

THE COURT: That is the way it is usually done. Very well.

MR. COHEN: Do I understand I cannot have this marked in evidence then, your Honor?

THE COURT: Not right now.

MR. COHEN: May I have it marked for identification?

THE COURT: Certainly.

[In open court]

THE COURT: Defendant's Exhibit C is marked for identification.

xx [Defendant's Exhibit C marked for Identification]

THE COURT: Ladies and gentlemen, Mr. Danahar has just stated on the record that the plaintiff has no objection to the deposition being read in its entirety. He has a perfect right to object to any question that was asked at the deposition which he regards as improper at the trial. Remember, I read you the stipulation of the deposition, and that is the general stipulation, that they pretty much ask any question that they can, but the right to ask such a question, if it is attempted to be used at the trial, is up to the trial Judge. So now the test is whether or not some of those questions were proper or improper.

Mr. Danahar, of course, will rise as he should to object to any question that he thinks is improper, or asked for information that is inadmissible.

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All right, Mr. Cohen, will you start to read the deposition.

MR. COHEN: Yes, your Honor. Two requests, your Honor. May I stand over here so as to --

THE COURT: Yes, and raise your voice.

MR. COHEN: Second, I have my own copy, if you would like to follow by the original --

THE COURT: I have no doubt that you gentlemen will read accurately. You are men of honor.

MR. COHEN: This is the deposition of the plaintiff, Michael T. Anderson, taken by the defendant before Anna Schmelzer, a Notary Public, at 2:15 p.m., on Thursday, December 13, 1973 at the offices of Alexander, Ash, Schwartz & Cohen, 801 Second Avenue, New York, New York.

Appearing on behalf of the plaintiff is his attorney, Matthew L. Danahar, and appearing for the defend- and was my office through Mr. Albert V. Testa, an attorney associated with us.

THE COURT: I am going to suggest something. Since it is quite long, select somebody to read the answers.

Is there anybody in the courtroom that you can call on? The monotony of the voice -- You? A juror? Aren't you kind. No, you are there to be sold a bill of goods. No. No.

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Counsel, will you oblige a brother attorney?

MR. SUAREZ: Yes, sir.

THE COURT: This is an old time -- I should not say old time, but he is a veteran at the bar. Come up here. You see what we do when there is question and answer, it jars your attention when they say, "Question, Answer." So what Mr. Cohen is going to do is read the question, and our friend here is distinguished -- he may question that later when I come to take care of his case in twenty minutes-- at any rate he is going to read the answers that were given by Michael Anderson.

MR. COHEN: Your Honor, may I be introduced to my co-reader?

THE COURT: Give your full name, will you?

MR. SUAREZ: Oscar Gonzalez Suarez.

THE COURT: With a distinguished legislative history, a distinguished representative of the down-and-outers of the community, as well as the very wealthy, a fighter for the rights of man.

All right, Mr. Cohen.

MR. DANAHAR: Your Honor, I just wanted to ask that Mr. Cohen has read, or given the jury the appearances at the time of this deposition, but I think he omitted to mention somebody else who was also present.

THE COURT: All right.

MR. COHEN: I have not finished. I am going to read every word.

THE COURT: Read every word. Let's start again now.

MR. COHEN: Also present for defendant was Mr. Joseph Ranken.

"Stipulation: It is stipulated by and between counsel for the parties hereto that the sealing and filing of the testimony are waived, that all objection except as to form are reserved until the time of trial, that the witness may sign his testimony before any Notary Public, that one copy of the testimony will be furnished to counsel for plaintiff without charge."

Then it says, "Michael T. Anderson, of Route 2, Box 2351-C, Brown Mills, New Jersey, having been first duly sworn, testified as follows:

"EXAMINATION BY MR. TESTA." He is asking the questions.

"Question --

THE COURT: No, don't say "Question."

MR. COHEN: I see, your Honor.

THE COURT: That is the purpose of this.

"Q Please state your name and address for the record.

"A Michael T. Anderson, Route 2, Box 2351-C,

camds 106 "Anderson"

Brown Mills, New Jersey.

"Q Are you the Michael T. Anderson who is the plaintiff in this action?

"A Yes.

"Q What is your occupation?

"A Right now?

"Q Yes.

"A Day man.

"Q By whom are you employed?

"A Great Lakes.

"Q How long have you worked for Great Lakes Dredge & Dock Company?

"A Off and on for the last seven years.

"Q On October 18, 1970, were you employed by Great Lakes Dedge & Dock Comany?

"A Yes, sir.

"Q In what capacity?

"A Deck hand. Deck hand.

"Q What was your weekly wage at that time?

"A I'm not sure.

"Q Do you have any idea, do you have any records you can look at to refresh your recollection?"

MR. DANAHAR: And I said, if I may interrupt, your Honor --

camds 107 "Anderson"

MR. COHEN: Yes, please do.

MR. DANAHAR: "What was it approximately?"

"A At the time I got hurt?

"Q On October 18, 1970, what were you making?

"A $295.80 for seven days.

"Q That is a week, then?"

MR. DANAHAR: I said, "A seven day week."

"A You have got a six day week and a seven day week.

"Q For a seven day week.

"A $295.

"Q Did you work steadily at the time, or did you work a week on and a week off?

"A No, I worked steady.

"Q Were you employed on a particular vessel or dredge on October 18, 1970?

"A Will you rephrase that?

"Q I said, were you employed on a particular vessel or dredge on October 18, 1970?

"A Yes. The 50.

"Q Is that Great Lakes Dredge No.50?

"A Yes, sir.

"Q In what capacity were you employed on Dredge No.50 on October 18, 1970?

"A In that certain time I was a deck hand.

camds 108 "Anderson"

"Q What were you duties as a deck hand on that date on that dredge?

"A Whatever the mate told me.

"Q Well, did you have a specific duties, or did you have to be told every time something had to be done?

"A On that certain day?

"Q Yes.

"A I was told to change the cable on that certain day. That was the job for that day.

"Q But generally speaking what were your duties on that day? I will come to the specific thing later. What were you general duties on that dredge on October 18, 1970 as a deck hand?

"A I was a repair watch. On a repair watch you do whatever they tell you to do. Whatever they want repaired. If you are working it's different.

"Q Let's start when you are working, then we will get the rest of it.

"What were you duties as a deck hand generally when you worked on Dredge No.50?

"A I ran the stern spud.

"Q What is that? What is the stern spud? Will you tell us for the record so we will all understand it?

"A The stern spud is a spud that holds the dredge

camds 109 "Anderson"

in the water. You have three spuds; the stern and the two bow.

"Q What do they do as a function of these spuds?

"A They keep the dredge stabilized.

"Q Did you have any other duties?

"A Wash down down the deck, pick up heavy objects, change cables.

"Q Does that cover everything generally?

"A Generally, all right.

"Q On October 18, 1970, did you report for work at some particular time?

"A 7:30.

"Q When you reported for work at 7:30 a.m. on October 18, 1970, did you report to somebody for instructions as to what you were supposed to do that day?

"A Yes; Capt. George.

"Q Did he have a last name?

"A De Graff.

"Q Did Capt. De Graff give you any instructions as to what you were to do that day?

"A No, he gave it to the mate.

"Q Did the mate in turn give you instructions?

"A He told us we got to change the cable.

"Q When did he tell you that?

camds 110 "Anderson"

"A I cannot recall what time it was. It was in the morning.

"Q What was the name of the mate?

"A Arthur Ramos.

"Q When you say he told you you were going to change the cable, what did that mean specifically, do you know?

"A Do I know?

"Q Yes.

"A Yes, I got the job. You are going to go up and change the closing cable.

"Q What cable?

"A Closing.

"Q What is a closing cable?

"A It's the wire which closes the bucket.

"Q Now will you give me a little description of what this dredge looked like and what bucket you are talking about now?

"A The dredge is a bucket dredge; a bucket dredge is a dredge that just use the bucket. You drop it down in the water and the bucket is open, you close it, come up, you have a bucketful of mud or sand, or whatever you are digging, and you dump it in the scow.

"Q Is that a clamshell type bucket?

"A Yes, a clamshell.

camds 111 "Anderson"

"Q You open it up in the middle, close it together and bring up mud or silt, or whatever it is that you are dredging; is that it?

"A Yes, sir.

"Q And what is that bucket attached to?

"A A holder and a closer cable.

"Q And the closer is a cable; is that what you are saying?

"A Yes, sir.

"Q And what is the holder you are talking about?

"A That is a cable, also.

"Q What are they attached to?

"A The boom.

"Q Is this a derrick or crane that you are talking about now?

"A Yes.

"Q And they are attached to the boom on the derrick then; is that it?

"A The wire is hooked to the bucket. It runs up the boom down to the drums.

"Q And it eventually goes around the winch then?

"A Not a winch, a drum.

"Q Is that drum a mechanized drum of some kind? Does it have a lever on it?

camds 112 "Anderson"

"A It's got a lever in the cab. The operator runs it.

"Q What cable or wire were you changing?

"A The closer."

MR. DANAHAR: I said, "At what point --"

THE COURT: Well, we don't want any interruptions unless they are important.

Go ahead, next question.

"Q What cable or wire were you told to change that day by the mate?

"A The closer.

"Q The closer?

"A Yes.

"Q Did Mr. Ramos tell you to do that?

"A He said, 'You are going to go up and change the closer cable.' He went up and did it.

"Q Did he tell you to do it, that's what I'm trying to find out? Did Mr. Ramos tell you to change the closing cable?

"A He didn't tell me. How can you put this? He's the mate. The mate said, 'You are going to change the cable. You give him a hand changing the cable.' He is the man in charge, not me.

"Q I understand that. Were you working with him?

"A Yes, sir.

camds 113 "Anderson"

"Q Was he also working on the cable?"

MR. DANAHAR: And I said, "You mean in operation itself?"

MR. COHEN: Yes.

"MR. DANAHAR: Or the cable itself?

"A The overall operations.

"Q Yes.

"A Yes.

"Q Was he actually doing the physical work, that is what I am asking, or was he just telling you fellows what to do?

"Do you understand what I mean?

"A Does he do the physcial work?

"Q Yes. Was he the man working with his hands with you, or was he just directing you?

"A He's the director more or less.

"Q He was telling you what to do then?

"A Yes.

"Q Exactly what did he tell you to do besides change the closer cable?

"A That was my job, changing the closer cable.

"Q That is all he told you to do?

"A Yes.

"Q When did you start doing that?

camds 114 "Anderson"

"A When we got there in the morning, 8:00 o'clock maybe.

"Q Did you start at 8:00 o'clock?

"A We go to work at 7:30, you change, have a cup of coffee, and then you went up and did your job.

"Q On this particular day did you start at 8:00 o'clock in the morning changing the closer cable?

"A I can't recall what time that would be.

"Q Well, whatever time it was how did you go about doing this?

"A There's a mate and two deck hands. You go up in a cab.

"Q Who goes up in a cab?

"A The mate and the two deck hands.

"Q Were you one of the two deck hands?

"A Yes, sir.

"Q Did you all go up into the cab?

"A I don't recall.

"Q What can you recall as to what you did in connection with this operation, the changing of the closer cable?

"A I disconnect it from the drum.

"Q Did you do that?

"A Bruce Anderson and I, and I believe Arthur Ramos.

"Q Who is Bruce Anderson?

camds 115 "Anderson"

"A He's a deck hand.

"Q Is he related to you?

"A Yes, sir.

"Q In what capacity?

"A He's my brother.

"Q Did you both go up into the cab?

"A I believe so, yes.

"Q What did you do specifically as far as that cable is concerned?"

MR. DANAHAR: And I said, "At what point?"

MR. COHEN: "At whatever point he started to do something."

MR. DANAHAR: "Is that what you mean, when he started?"

MR. COHEN: "Yes, I am just trying to find out what he did and how this operation went.

"MR. DANAHAR: You mean when they first started, what did they do?"

MR. COHEN: "Right."

"Q What did you do?

"A There's a scow alongside of the dredge, the bucket is on the scow, you go up in the cab, one guy would be watching.

"Q Don't tell me what you do generally. Tell me

camds 116 "Anderson"

what you did that day.

"A I am trying to.

"Q No, you said you go up, in quotes. I want to know what you did, not what you generally do. Tell me what you did.

"A What I did?

"Q Yes.

"A I can't recall offhand.

"Q Do you have any recollection of what you did in connection with this cable on this day?"

MR. DANAHAR: And I said, "When he first started?"

MR. COHEN: "Yes.

"A We unhook it from the drum."

MR. DANAHAR: I said, "Don't use the word 'we'. What did you do when you first started with this job of changing the cable, if you recall?

"A I get the torch, get the hammer, get the sledge hammer. I put it on the scow.

"Q You put this thing on the scow. What did you do as far as the cable is concerned, that is what I am trying to find out."

MR. DANAHAR: And I said, "As best you can remember.

"A Myself?

"Q Right.

camds 117 "Anderson"

"A I took the nuts off the cable from the drum, hook-up the Chinese Finger to it, hookup the small wire.

"Q Don't go too fast now. Are you saying that you unhooked the cable from the drum?

"A First you tie it off. I did not tie it off.

"Q What was your objective, though? Were you going to take one end of the cable off the drum?

"A Yes, sir.

"Q And then?

"A Turn it.

"Q Turn it around so that the other end would be on the drum?

"A Yes, sir.

"Q Did you reverse the cable then?

"A You turn the cable end for end.

"Q Okay. So that you take the end that was on the cable and put it on the bucket then; is that it?

"A Right."

MR. DANAHAR: Your Honor, I think if Mr. Cohen studies it, I think there is a typographical error here.

MR. COHEN: I think you are right. I will make the change in the --

THE COURT: On what do you agree?

MR. COHEN: We agree.

camds 118 "Anderson"

THE COURT: Agree what? It should read how?

MR. COHEN: The word in the next question should read "drum" so it will read -- the end that was on the bucket should be on the drum.

MR. DANAHAR: The question before that where the the word "cable" appears I believe should be "drum", too, don't you agree, Mr. Cohen?

MR. COHEN: That's right.

THE COURT: All right. Those changes are agreed on and the record will so reflect. Do not touch the deposition itself. Do not physically touch it.

MR. COHEN: My copy.

THE COURT: Oh, your copy. That is all right. But the original is not to be touched.

All right, next.

"And the end that was on the bucket would go on the drum."

MR. COHEN: And Mr. Danahar said --

MR. DANAHAR: Yes, I said, "would go on the drum" because of that previous mistake.

THE COURT: No, don't say because, because the jury only has to get the exact words. I don't think you ought to bother us with little insignificant meaningless things. Let us concentrate on the testimony and not on

camds 119 "Anderson"

just some spontaneous comment by counsel that has not any real value. Only get up and read what you had to say if it has value. Otherwise let's not interrupt the flow of the testimony.

All right, what is the last question, please.

MR. COHEN: I am sorry.

"Q It would go on the drum; is that right?

"A Yes.

"Q That is what the whole job was about?

"A Right, turn the cable end for end.

"Q In order to that you had to unhook the end of the cable that was on the drum first; is that right?

"A Yes.

"Q Did you do that yourself, you personally?

"A Myself?

"Q Yes.

"A I give a hand.

"Q You gave a hand to whom?

"A I can't recall if it was Bruce Anderson, Arthur Ramos up there, or the operator.

"Q Do we have another party involved now, when you say 'the operator'?

"A The operator is the man above the mate.

"Q Can you identify him by name?

camds 120 "Anderson"

"A Eddie Ducey.

"Q How do you spell it?

"A D-u-c-y, I don't know.

"Q But in any event you and somebody else there unhooked the end of the cable that went around the drum; is that right?

"A After it was pulled off.

"Q Who pulled it off?

"A The boom.

"Q After you got the end of the cable off the drum, what did you do next?

"A You hookup the smaller the smaller cable to it.

"Q What smaller cable are you talking about now?

"A The tugger winch cable, half inch.

"Q What was the purpose of doing that?

"A To hookup the donkey winch wire.

"Q Yes, the tugger winch.

"A Keep the same wire.

"Q What was the purpose of hooking that one up?

"A You hook that up into the bigger wire and overhaul the donkey boom so you get the smaller wire down there so you can hookup the other end and pull it back up.

"Q So by means of this smaller wire then you pull the big cable up the boom and down, and then you reverse

camds 121 "Anderson"

it and you put it on the other end and put it up again; is that it?

"A No.

"Q Then you tell me how the operation works, that is what I am trying to find out.

"A To take the wire off the drum on that particular day I believe the operator on the boom until we get to the end, one turn or half turn, I can't recall. Somebody tied it off up on top. I can't recall who was that. Then we, myself and someone else took the nuts off.

"Q Where are these nuts located? On the drum?

"A On the drum. You pull the wire out. You hookup your small wire, and then you just let it go up. You turn the machine off.

"Q That takes the big cable out?

"A Out.

"Q Out to what point?

"A To the scow.

"Q Once you have got it there, then what did you do?"

MR. COHEN: That was not answered.

"Q When you got to that point what happened then on October 18, 1970? What did you do then?

"A They reeved the smaller wire through the bucket.

"Q Through the bucket?

camds 122 "Anderson"

"A Yes, then we hook it up to the other end of the cable.

"Q Okay.

"A Then we went and had coffee.

"Q After the coffee break what did you do? Did you come back and resume this operation?

"A Yes, sir.

"Q How much time had elapsed by that time? Have you any idea?

"A I can't recall.

"Q Did you then bring the other end of the cable back in the same direction?

"A Then we brought the other end up.

"Q Is that what you did then?

"A You mean myself, did I do it?

"Q I am only asking what you did. That is all I am trying to get you to tell me, how you did this operation, if you will.

"A I was told to go up in the cab.

"Q Who told you that?

"A I just can't recall whether it was the mate or the captain.

"Q I just want to bring you back to the point where you got the cable over to the scow; right?

camds 123 "Anderson"

"A The scow alongside the dredge.

"Q Then you put the smaller cable through the bucket?

"A Right.

"Q Now take it from there and tell me how you got the end of the cable back to the drum. I assume that is what you were doing, you were reversing the cable, weren't you?

"A You turn it end for end, yes.

"Q Right. Tell me how you did that."

MR. DANAHAR: And I said, "Which cable are you talking about?"

MR. COHEN: "The big cable. Isn't that the one we are talking about?"

MR. DANAHAR: And I said, "There are two cables involved. There is a big cable and there is a tugger cable.

"Q The one called the closer cable.

"A How it got back to?

"Q Yes.

"A You wind it up there in the cab, the tugger.

"Q You run the tugger, is that what you were doing, running the tugger?

"A Yes, sir.

"Q Tell me what you did. Go ahead.

"A I was standing on the left side, I believe,

camds 124 "Anderson"

running the tugger.

"Q That is in the cab?

"A In the cab.

"Q Where is it in the cab?

"A The center of the cab.

"Q Go ahead. You are operating the tugger; is that it? How do you do that? Has it got a lever of some kind?

"A You are talking about how I did, or it is done in general?

"Q No, how you did it. I am only interested in what you did on the day of this accident. Just tell me how you operated the tugger.

"A How I operated it that day.

"Q Right.

"A How I operated that day.

"Q Yes.

"A From the left-hand side running the lever with my right hand.

"Q You were standing on the left-hand side of the tugger?

"A No, the left-hand side of the wire.

"Q You are operating with your right hand on a lever?

"A Yes, sir.

"Q Now go ahead. What is happening to the wire as

camds 125 "Anderson"

you are operating the lever of the tugger?

"A It's going on the drum.

"Q Is it going past you?

"A Yes, sir.

"Q What part of your body is it going past?

"A About my knees.

"Q I mean the left or right side of your body.

"A The front of --

"Q It is going right in front of you?

"A Yes.

"Q At knee height?

"A About.

"Q And you were watching it as it goes by; is that right?

"A In the beginning you have to kick it over so it don't get kink or thrown off the drum.

"Q Is it going over the drum or under the drum?

"A When you are coming in?

"Q Yes.

"A Under.

"Q So when you are reversing it you are operating the lever with your right hand, you are bringing it back now?

"A I am bringing it back.

camds 126 "Anderson"

"Q You are operating the tugger with your right hand on the lever and this wire is going in front of you at knee height?

"A Right.

"Q Is it going under the drum?

"A Yes, sir. No matter what way you go it's going under.

"Q Then it goes under the drum and then it winds around the drum?

"A Yes."

MR. DANAHAR: Your Honor, I said, "Around the drum of the tugger.

"Q Around the top of the drum; right?

"A Yes.

"Q While this was going on did something happen?

"A Yes, sir.

"Q How much of the wire had gone around the drum before something happened?

"A I believe it was three turns.

"Q How much?

"A About three turns.

"Q Three turns?

"A Yes. I believe.

"Q Three turns of the wire had gone around the drum?

camds 127 "Anderson"

"MR. DANAHAR: That is what he said.

"Q And then something happened?

"A Yes, sir.

"Q Will you tell me what happened?

"A What happened?

"Q Yes.

"A I don't know. That was it.

"Q Wait a minute. You are claiming that something happened in this case, aren't you?

"A Yes.

"Q And I am asking you to tell me what it was that happened.

"A My hand got caught.

"Q Where?

"A On the wire.

"Q Which hand?

"A My left hand.

"Q So your right hand was on the lever. What were you doing with your left hand as the wire was going by?

"A You tap it to keep it from going across the drum. You have to keep it up, to keep it in one place.

"Q When you say you tap it, what is the purpose of doing that? Why were you tapping it with your left hand?

"A Why?

camds 128 "Anderson"

"Q Yes.

"A Because I had to listen for the guys on the deck and I had to make sure the wire was running through the shivs on top.

"Q When you say shivs on top, you mean on top of the boom?

"A Boom and through the bulkhead at once because there was nobody at the door.

"Q Are you supposed to be watching the bucket and the shivs while you are doing this operation?

"A No, you ain't supposed to.

"Q Is that what you were doing?

"A No. Is that what I was doing?

"Q Yes, at the time the accident happened?

"A I was tring to do three jobs at once.

"Q I am only trying to find out, Mr. Anderson, what you were doing at the time this accident happened."

MR. DANAHAR: And I said, "Your question, as I recall it, was why were you tapping the wire with your left hand."

MR. COHEN: That's right.

"A So I wouldn't have to jump over the cable to check on the other three things that were going on at the same time.

camds 129 "Anderson"

"Q Does the wire have to come around the drum evenly?

"A Yes, sir.

"Q Is that why you were tapping it, to see that it came around evenly? Is that the idea?

"A Yes, sir.

"Q That is what I am trying to find out. You had done that for three turns then?"

MR. DANAHAR: And I said, "About."

"Q Approximately three turns. So you tapped it to keep the wire even on the drum; is that it?

"A Yes, sir.

"Q And then something happened to you?

"A Yes, sir.

"Q And you say your left hand got caught on the wire?

"A Yes, sir.

"Q How did that happen? How did it get caught on the wire?

"A I don't know.

"Q Was there anything on the --"

MR. DANAHAR: And then I said, "What do you mean by 'How did it get caught'?

"Q Was there anything on the wire that would have caught your hand?

"A I truthfully cannot say.

camds 130 "Anderson"

"Q Was this a smooth wire, or did it have little things sticking out of it?

"A Did it have fishhooks, in other words?

"Q Yes.

"A I truthfully can't say.

"Q All I am trying to find out is if there was anything on the wire that would have caught your hand.

"A I cannot say.

"Q Would you describe the wire to me that was going around the drum that you were tapping with your hand? Can you give me a description of what it looked like?

"A Only two or three turns.

"Q Can you tell me what it looked like?"

MR. DANAHAR: And I said, "You mean by that its size and color?"

MR. COHEN: "Size, shape, appearance, whether it was smooth or rough, red, white or blue or what.

"Q Can you give me some kind of a description of what that wire looked like?

"A It was about a half inch wide.

"MR. DANAHAR: That was what, in diameter?

"THE WITNESS: Diameter. Round. And that we believe it was black or dark blue.

"Q Was it smooth wire?"

camds 131 "Anderson"

MR. DANAHAR: And I said, "What do you mean by smooth?"

MR. COHEN: "I don't know. That is what I am trying to find out.

"A Was it a new wire?

"MR. DANAHAR: I object to the question about a smooth wire.

"A Was it a new wire?

"Q I am only asking for a description of what the wire looked like, that is all. If you can tell me. You saw it, I didn't.

"A I can't say. I truthfully can't say if that wire was bad or not.

"Q I didn't ask you if it was bad.

"A You asked me if it was good.

"Q I asked you if it was smooth.

"A That is the same thing.

"Q Mr. Anderson, I'm only trying to get a description of this wire. You told me your hand got caught on the wire, and I'm trying to get the best description of the wire which you can give me."

MR. DANAHAR: And I said, "He has given it to you.

"Q Is that all you can tell me about it?

"A That is all I can remember."

camds 132 "Anderson"

THE COURT: May I see that, Mr. Suarez?

MR. SUAREZ: Yes, sir [handing].

THE COURT: Mr. Anderson, I am only trying to get a description of this wire. You told me your hand got caught on the wire and I am trying to get the best description of the wire that you can give me.

Mr. Danahar, he has given it to you. "Question, is that all you can tell me about it? Answer, that is all I can remember."

All right, now go on with the next question, Mr. Cohen.

MR. COHEN: Your Honor, may I get a drink of water?

THE COURT: Why, of course. What page are you on, Mr. Suarez?

MR. SUAREZ: Twenty-eight.

THE COURT: Twenty-eight? Why don't you read faster than that? All right, we will take a short recess.

[Recess]

[In open court - jury present]

THE COURT: Ladies and gentlemen of the jury, there have been a lot of problems that have come up in the case, as I told you. What do you do when there is a deposition being read that they have a perfect right to read? The doctor has been summoned to come here to testify.

camds 1_33 "Anderson"

He has got two major operations tomorrow morning and he is sitting on pins and needles and he wants to know when he is going to be called and can he get through with his testimony today. Then I have got a lady on the jury who rightfully says, please don't keep me here beyond 4:30, I am afraid when I get home at nighttime to get home late. Those are things we have got to recognize. These are realities. These are truths. These are things that come up and have to be dealt with. We can't wish them away. They are here. You have got to look at them and do the best you can.

So I want you to know this is not beer and skittles, and I am not twiddling my thumbs, and there are plenty of problems here as there should be. The doing of justice is very delicate and very sensitive.

Let us complete the reading of the deposition.

MR. COHEN: Thank you. Your Honor, since Mr. Suarez has left may I ask Capt. Wheeler to come up here and --

THE COURT: Capt. Wheeler, would you come up, sir?

CAPT. WHEELER: Yes, sir.

THE COURT: All right. Now, where did you leave off? What page?

MR. COHEN: Page 28, the second question up from the bottom of the page.

camds [illegible] "Anderson"

THE COURT: All right. Repeat the question.

MR. COHEN: I will repeat the one before that, your Honor.

"Q Is that all you can tell me about it?

"A That is all I can remember.

"Q Do you know of any reason why your hand got caught in that wire?

"A In my opinion?

"Q Whatever you know about it.

"A I believe it got caught, they didn't have enough men on the machine.

"Q Now, Mr. Anderson, I am asking you about the wire itself. Do you know of any reason why that wire would catch your hand?

"A Yes, it could have had a fishhook in it.

"Q Did it?

"A I cannot say.

"Q You didn't see any such thing, did you?

"A I truthfully can't say.

"Q That is all I am asking.

"A I can't say if I slipped, either.

"Q You can't say what?

"A Slipped.

"Q Are you making any claim that you slipped here?

camds 135 "Anderson"

"A No. I am making no claim that I slipped, but you are working in the water.

"Q Mr. Anderson, please, I am only trying to find out what the nature of your claim is here, not what could have been. What claim are you making here? That your hand got caught in the wire?"

MR. DANAHAR: And I said, your Honor, "He said that a number of times. There is no need to go over that."

MR. COHEN: "He talks about slipping now.

"MR. DANAHAR: All he can say is maybe he slipped.

"Q So you are not making any claim that you slipped, are you?

"A No.

"Q Had you ever done this job before?

"A Am --"

MR. COHEN: I am sorry, I read that wrong.

"Q Had you ever done this before this job?

"A Many times.

"Q How many times had you done this job before October 18, 1970?

"A Oh, man. I cannot say.

"Q Many times, though. All right.

"A But not by myself.

"Q Is it always done the same way?

camds 136 "Anderson"

"A Yes. I don't know, yes, it's done the same way.

"Q Is it always done the same way?"

MR. DANAHAR: And I said, "Let him finish his answer.

"A You mean is it always done the same way by me?

"Q Yes, the way you have described with the wire coming round the drum."

MR. DANAHAR: And I said, "You mean with the same number of men, too?"

MR. COHEN: "I didn't ask him that. I am just asking whether it was done that way or in any other way.

"A It's always hooked up the same way.

"Q That is what I am driving at. It is always hooked up the same way; is that right?

"A That's right.

"Q This particular wire that you were using that day, had that wire been on this dredge before, Dredge No.50?"

MR. DANAHAR: And I said, "Which wire are we talking about?

"Q The closer wire, the one you were handling.

"A My hand did not get caught on the closer wire.

"Q What wire?

"A The tugger wire.

"Q Had this tugger wire been on this dredge before?

camds 137 "Anderson"

"A What do you mean, before?

"Q Before October 18, 1970?

"A You mean was it a new wire?

"Q No. I said was it on the dredge before October 18, 1970, to your knowledge?

"A I cannot understand what you mean by that. Was it on another machine? Is that what you were asking?

"Q Mr. Anderson, just listen to me, will you?

"Had you ever seen this tugger wire on the Dredge No. 50 before October 18, 1970? The one that your hand got caught on?

"A Did I ever see that wire before?

"Q Yes.

"A Yes, I believe so.

"Q Do you know how long it had been on Dredge No. 50 before October 18, 1970?

"A No.

"Q Had you ever used that wire before?

"A They might have changed it. I cannot say."

MR. DANAHAR: I said, "The question was, did you ever use it?

"A Did I ever?

"Q Yes.

"A I still can't say."

camds 138 "Anderson"

MR. DANAHAR: And I said, "All right, that is your answer.

"Q How many people were working with you that day on this operation?"

MR. DANAHAR: And I said, "You mean up in the cab, or involved in the whole operation?" And then I said, again, "The overall operation.

"A Three.

"Q That was yourself and Mr. Ramos and Bruce Anderson; is that right?

"A No, forgive me for a minute.

"Q All right. Now you tell me.

"A Are you talking about when the wire was winding up, or when we were pulling it off?

"Q I am talking about the whole operation from the time you started until the time you finished. How many people were working with you?

"A There are two different number of men at time.

"Q All I am asking you to do is tell me how many people."

MR. DANAHAR: And I said, "He will do it."

MR. COHEN: The next sentence is marked with a Q, it should be an answer, I believe.

MR. DANAHAR: That is correct, your Honor.

camds 139 "Anderson"

THE COURT: All right, there it is, you agree. What is the answer, Mr. Wheeler?

"A When we werewinding it off I believe we had five.

"Q Who were they?

"A Artie Ramos, the mate, Eddie Ducey, the operator, Bruce Anderson, the deck hand, Norman Herbert, the engineer I believe was out there giving us a hand, and myself.

"Q Are you saying that those men worked with you when you were tugging the closer cable?

"A Yes.

"Q Over to the scow; is that right?

"A When we were overhauling the wire, you mean?

"Q When you took it from the drum, the winch drum over to the scow, is that what you call overhauling?

"A Yes, I believe so.

"Q So that is one half of the operation, isn't it?

"A Yes, sir.

"Q In order to bring the other end back to the drum how many men were working?"

MR. DANAHAR: And I said, "There again, do you mean in the overall operation or with him in the cab?"

MR. COHEN: "In the overall operation.

"A In the cab, and I believe Artie Ramos, Eddie Ducey was on the scow watching the cable.

camds 140 "Anderson"

"Q In the first part of this operation when you said you had five men working with you to take the closer cable from the drum over to the scow, what were the other four men doing?

"A What were they doing?

"Q Right. What were they doing?

"A I can explain it easier by saying that the whole job was about when we begin.

"Q Tell me what they were doing on that day. That is what I want to know. You said five men worked with you that day.

"A Right.

"Q You did something and the others did something. Tell me what you did and what they did."

MR. DANAHAR: I said, "You have already asked him the question what he did. You have been through that, I think."

MR. COHEN: "In the first part of the operation?"

MR. DANAHAR: And I said, "Yes, sir."

MR. COHEN: "Then tell me what the other men did."

MR. DANAHAR: And I said, "The operator, what did he do?

"A The operator was running the crane. Swung the boom. That is the operator. Eddie Ducey.

camds 141 "Anderson"

"Q What did Mr. Ramos do?

"A I can't recall whether he was in the cab with me or if he was on deck pulling the cable down the scow.

"Q What was Mr. Herbert doing?

"A I believe he was on the scow pulling the cable, too.

"Q And Mr. Ducey, what did he do?

"A He was the operator. He was running the crane.

"Q Bruce Anderson, what did he do?

"A I believe he was in the cab, or he was on deck watching.

"Q In the second part of this operation you were in the cab. Who were the other two men?

"A Artie Ramos and Eddie Ducey.

"Q Is that who they were?

"A Artie Ramos and Eddie Ducey.

"Q I don't know whether you are telling me or asking me. What were they doing in the second phase of this operation?

"A Watching the wire go through the bucket and make sure that it was clear.

"Q Were they on the scow?

"A I believe so.

"Q Both of them?

camds 142 "Anderson"

"A I couldn't say, because I was in the cab. I can't see down.

"Q At the time that you said your left hand got caught on the tugger wire, what happened to your left hand, or to you, to your body?

"A When my hand got caught?

"Q Yes.

"A I don't know whether I was thrown over the machine or I was just pulled down. I cannot, you know, it was like that [snapping his fingers]. It happened.

"Q Did you let go of the lever with your right hand when the left hand was caught on the tugger cable?

"A I believe so.

"Q Did you fall down?

"A I said I don't know if I went over the machine or I just was pulled down. I cannot say."

MR. DANAHAR: And I said, "When you say 'machine' you mean the winch?

"A The tugger.

"Q Are you talking about the winch?

"A The tugger."

MR. DANAHAR: And I said, "The tugger winch.

"Q You don't know whether you went straight down or you went over?

camds 143 "Anderson"

"A I can't say.

"Q Did anything happen to your hand?

"A My hand?

"Q Yes."

MR. DANAHAR: And I said, "You mean was it pulled into the winch, or something?"

MR. COHEN: "I am just asking if anything happened. I don't know what happened. I am not suggesting anything to him. I am asking him."

MR. DANAHAR: And I said, "You are talking about his injuries now?"

MR. COHEN: "I am asking what happened to his hand. He said it got caught in the tugger.

"A Next thing I knew I got up, I believe I got up and I was shocked, you know, I was just -- my arm was swinging.

"Q Wait, Mr. Anderson. Let's take one thing at a time.

"Do you know whether anything happened to your hand? Your hand got caught in the wire, did you see anything happen to it.

"A No, I can't say.

"Q Did you feel anything in your hand at that time?

"A I had gloves on.

camds 144 "Anderson"

"Q Did you feel any pain, did you feel any contact, did you feel any sensation in your left hand at the time this happened?

"A It happened like that, I didn't feel no pain in the hand. I felt it in the arm.

"Q You felt pain someplace then in your arm?

"A Yes, sir.

"Q Did your hand get caught in anything as far as you know? Did you see anything like that happen?

"A Did my hand get caught in anything, or on anything?

"Q Did you see your hand get caught in anything, or on anything at the time this accident happened?"

MR. DANAHAR: And I said, "You mean --"

MR. COHEN: "Wait a minute, don't ask me what I mean. I am asking if you saw anything.

"A I don't know what you mean."

MR. DANAHAR: Wait, that's me. I said --

MR. COHEN: He said it.

MR. DANAHAR: Sorry, your Honor. I said, "I don't know what you mean, get caught in.

"A I did not say my hand got caught. I said I didn't know if it got caught.

"Q I thought you said that. At the time this accident happened did your hand get caught on anything?"

camds 145 "Anderson"

MR. DANAHAR: And I said, "He testified it got caught on the cable."

MR. COHEN: "That is what I thought he said."

MR. DANAHAR: And I said, "Or the wire."

MR. COHEN: "Now he says it didn't. I am trying to find out.

"Q Is that what you said, Mr. Anderson?

"A I can't recall. You are asking me so many questions.

"Q I am only trying to find out. I thought you said your hand got caught on something. Are you saying you don't know now?

"A My hand got caught on something?

"Q Yes.

"A I cannot say.

"Q Did you see anything happen?

"MR. DANAHAR: When you say 'caught on something' you mean something besides the cable that he already testified that his hand got caught on?"

MR. COHEN: "I am only asking him what he saw and what happened.

"MR. DANAHAR: Well, you know, he has aleady testified that his hand got caught on the cable."

MR. COHEN: "No, he is saying he doesn't know. He is saying 'I didn't say that', so I am only asking him

camds 146 "Anderson"

what happened.

"MR. DANAHAR: I don't know that he said that."

MR. COHEN: "That is just what he just said.

"A Did my hand get caught in the cable?

"Q I am asking if you saw anything happen to your hand. Did you or didn't you?

"MR. DANAHAR: I object to the form of that question because I don't know what you mean by 'did anything happen to your hand'"

MR. COHEN: "That is a very simple question. The man --

"MR. DANAHAR: At what point are you talking about?"

MR. COHEN: "At the time the accident happened did something happen to your hand?

"MR. DANAHAR: Do you mean was it hurt?"

MR. COHEN: "Will you stop injecting yourself in this deposition? I am only asking him what happened to him, what he saw happen.

"MR. DANAHAR: The only reason I am injecting myself is that I don't understand what your question means and, therefore, I am assuming the witness doesn't."

MR. COHEN: "I am asking the questions. The man had an accident, I am asking what he saw happen.

"MR. DANAHAR: That is the question you are

camds 147 "Anderson"

putting now. It's not the same question you put before."

MR. COHEN: "It is the same question I put before.

"Q Did you see anything happen to your hand at the time this accident happened, Mr. Anderson?

"MR. DANAHAR: I still object to the form of the question, the use of the word 'happen.' I don't know what you mean by that."

MR. COHEN: "Please, Mr. Danahar, you don't have to know what I mean. This man was there. Something happened. I want him to tell me.

"MR. DANAHAR: I don't think he knows, either."

MR. COHEN: "That is all I am trying to find out.

"Q Do you know what happened, or not, at the time this accident happened?

"A What do you mean, what happened?

"Q Come on, don't fence with me. Did something happen to your hand, or didn't it?

"MR. DANAHAR: Are you talking about whether it was injured or not?"

MR. COHEN: "I am talking about whatever happened at the time of this accident. Don't ask me what I am talking about, the question is, what happened to this man. You are making a claim here and I am asking him to tell me what happened to him.

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"MR. DANAHAR: He has just told you he doesn't know what you mean when you use the word 'happened' and I don't know myself.

"Q Did an accident happen to you?

"A Did get hurt? Yes.

"Q What?

"A Did I get hurt, you mean? Yes.

"Q Tell me what happened then.

"MR. DANAHAR: He has already told you, his hand got caught on the cable."

MR. COHEN: "That is what he said first, then he said he didn't know his hand got caught on the cable. I want to find out what --

"A I didn't say my hand didn't get caught.

"Q What did you say? Did your hand get caught or not?

"A I was running the cable. The next thing I knew I was in pain.

"Q Okay. Now, did something happen that caused you to be in pain? That is what I am trying to find out. This is no mystery. Either something happened or didn't happen. Will you tell me what it was?

"MR. DANAHAR: He has told you already his hand got caught on the cable."

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MR. COHEN: "No, he hasn't told me. That is the whole trouble. He said it once, and then changed his mind, and he said he didn't know the last four times.

"MR. DANAHAR: He apparently misunderstood your question."

MR. COHEN: "I don't know how I can make it any clearer than that. Let's try it once more.

"Q You said you were running this cable, and then you were in pain. Did something happen that caused you to be in pain?

"A My hand got caught in the wire, or, on the wire into the drum.

"Q Okay, fine. Your hand got caught on the wire. That is the tugger wire?"

MR. DANAHAR: And I said, "Into the drum."

"A Yes, sir, that is the tugger wire.

"Q If you did see that happen did you see your hand get caught on the wire?

"A Did I see my hand get caught?

"Q Were you looking at your hand as you were patting this wire?

"A Was I looking at my hand?

"Q Mr. Anderson, don't repeat every question that I ask. Just answer the question.

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"Were you looking at your hand when you were patting the wire?

"A I believe so.

"Q Did you see it get caught on the wire?

"A I can't say.

"Q Did you see anything else happen to your hand, did you see it get caught anywhere else?

"A My left hand?

"Q Your left hand, yes.

"A I can't recall that, either.

"MR. DANAHAR: He testified that it went into the winch, didn't he?"

MR. COHEN: "Mr. Danahar, he just said he can't recall now. If you want to testify we will take your deposition, but he said he can't recall now.

"MR. DANAHAR: You keep going over the same subject matter. He told you that it got pulled into the winch, or something to that effect."

MR. COHEN: "You said that, he hasn't said that yet. He said he doesn't know.

"Q Is that right?

"A Caught? I didn't go to school for fifty years.

"Q Did you see your hand get pulled into anything?

"A Did I see my hand get pulled into anything?

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"Q Please don't repeat my question. Did you see your hand get pulled into anything? That is the question. Just answer it.

"A It got pulled into the drum.

"Q Did you see that happen with your own two eyes?

"A With my own two eyes?

"Q Yes, did you see that happen?

"A Are you asking the question?

"Q I am asking the question, did you see that happen with your own two eyes?

"A I believe I did.

"Q Are you sure?

"A I believe I did.

"Q What happened then?

"A What happened then? I got up and my arm was swinging around like a chicken without a head.

"Q What was that? Your arm was swinging --

"MR. DANAHAR: Like a chicken without a head.

"Q Where was it swinging around?

"A In the air.

"Q Was it still on your body still attached to your body?

"A Yes, thank God.

"Q It wasn't swinging on the ceiling then somewhere,

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was it?

"A No, sir.

"Q Did you have to pull your arm out of anything that it got caught in?

"A Did I have to pull it out?

"Q Please don't repeat. You said it got caught in something. Did you have to pull it out or not?

"A I can't recall if I pulled it out or not.

"Q After that happened what did you do then? Did you turn the tugger off, or was it still running?

"A I can't recall that, either.

"Q Did you stay there, or did you go somewhere else?

"A I went to the door. The first thing I did I grabbed my arm.

"Q Did you feel any pain at that time?

"A Pain? Yes. I believe it was pain and shock, you know.

"Q What did you do then? Did you leave the cab?

"A I screamed.

"Q Did you leave the cab then? Did you go someplace and report this?

"A I went to the side door. They heard me. They got a ladder.

"Q Who heard you?

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"A The guys on deck. I don't know that it was Artie Ramos or Eddie Ducey, Bruce Anderson.

"Q What happened then?

"A They got a ladder.

"Q What happened then?

"A I climbed down the ladder.

"Q You did that by yourself?

"A Climbed down the ladder?

"Q Yes.

"A I don't recall.

"Q What did you do then?

"A The captain was on one side of me, and somebody else was on the other side, and we were walking back to the stern, and I said 'You had better go in because I think I'm going to faint.'

"Q What did you do?

"A What did I do?

"Q Did you go someplace after this? Did you go to a doctor or to a hospital?"

MR. DANAHAR: And I said, "He's telling you what he did.

"A I was walking back to the stern with the old man and somebody else, 'You had better grab me, I think I'm going to faint.'

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"Q The question --

"A I'm trying to tell you the whole thing.

"Q Mr. Anderson, please. The question is, what did you do? Not what did you say.

"A I didn't do nothing.

"Q Did you go to a doctor?

"A Yes.

"Q When?

"A Right after the accident.

"Q What doctor did you go to"

"A I went to Polyclinic.

"Q Is that the name of the doctor?

"A I don't remember the doctor in Polyclinic.

"Q Is Polyclinic a hospital? Is that what you are saying.

"A Yes.

"Q Where is it?

"A In Manhattan. I don't recall what is the address.

"Q Where was this dredge at the time this accident happened?

"A Most of it was at Pier 80.

"Q That is --

"A Most of it was Pier 80.

"Q That is on the west side of Manhattan?

"A Yes, sir.

"Q And from there you went to Polyclinic Hospital?

"A Yes, sir.

"Q How did you get there?

"A Cab.

"Q When you got there what did they do for you?

"A They X-rayed me and gave me needles for pain.

"Q Did they do anything else?

"A Taped the arm to me.

"Q Were you admitted to the hospital as an in-patient, or did you just get out-patient treatment?

"A I went from there to Doctor's Hospital on Staten Island.

"Q How long were you at Polyclinic Hospital?

"A Maybe two hours.

"Q Did they do anything else besides take X-rays and tape your arm?

"A Gave me needles.

"Q Then where did you say you went from there?

"A Doctor's Hospital.

"Q Were you an in-patient or an out-patient there?

"A In.

"Q How long were you in that hospital?

"A I believe thirty-one days.

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"Q What did they do for you in those thirty-one days?

"A Thirty-one days trying to get the swelling and relieve the pain.

"Q What treatment?

"A Treatment?

"Q Treatment.

"A By treatment did you mean medication?

"Q I mean whatever they did for you in the hospital.

"A Okay. I'm trying to explain that.

"Q What did they do for you? Did they give you --

"MR. DANAHAR: You have all the hospital records. Do you have to ask him about those?

"Q Did they give you medicine?

"A Yes.

"Q Did they operate on your arm?

"A Yes.

"Q Do you know what kind of an operation they performed?

"A They put a plate in my arm.

"Q Where in your left arm, do you know where they put it?

"A In the upper part.

"Q Did they tell you anything was broken there?

"A Yes. It was broken and pulled about an inch and

a half.

"Q Do you remember the date you were in that hospital?

"A October 18th to November 18th, I believe.

"Q When you were discharged from the hospital on November 18th did they say you had recovered or not?

"A No, I was in a cast.

"Q You were discharged with a cast. What happened? Did you see the doctor after that?

"A Yes. I saw them very often.

"Q How many doctors? What are their names?

"A Three doctors. Dr. Brigham, Dr. Levinthal and a Dr. Frank.

"Q How long did you see them?

"A I can't recall how long.

"Q Six months? Three months? A year? Do you have any idea of the length of time you went to these doctors.

"A I had doctors after them, what I went to, so I went from one doctor to another.

"Q Did you see any other doctors than the three you just mentioned?

"A Yes, I saw them quite often for a period of I don't know how long.

"Q Can we get their names and addresses, please?

"MR. DANAHAR: You have all that stuff."

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MR. COHEN: "I don't know whether I do or not.

"MR. DANAHAR: Sure you do."

MR. COHEN: There was a discussion off the record.

"Do you have the names of these doctors?

"MR. DANAHAR: Look at your answers to interrogatories. You have got them all there."

MR. COHEN: "Can I get it from him? He must know the doctors.

"MR. DANAHAR: It's so simple to look at the whole file. You have it all there."

MR. COHEN: "I want him to tell me. I have a right to ask him to tell me what doctors treated him.

"Q Do you want to tell me, Mr.Anderson, what doctors treated you?

"A In the beginning?

"Q Yes.

"A Dr. Levinthal, Dr. Brigham, and I think Dr. Frank was an associate of Dr. Levinthal.

"Q Doctor who?

"A Frank.

"Q Did you see any other besides those three?

"A Doctor's Hospital? No.

"Q Anywhere?

"A Yes, I saw many doctors after that.

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"Q Do you remember their names?

"A No.

"Q What was the last time you saw any doctor for the injuries that you sustained on your left arm on October 18, 1970?

"A The last time?

"Q Yes.

"A Maybe a month or so ago. I got a doctor's appointment the 18th to see another doctor.

"Q Eighteenth of what?

"A This month.

"Q December of 1973?

"A Yes.

"Q Were you in any other hospital than Polyclinic and Doctor's Hospital?

"A 2

"Q What hospitals?

"A NYU.

"Q NYU Medical Center?

"A New York University.

"Q Medical Center?

"A I believe.

"Q Where is that located?

"A The East Side.

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"Q The East River Drive?

"A Off the East River Drive.

"Q And 25th Street?

"A First Avenue, Second Avenue.

"Q How long were you there?

"A Three days.

"Q Did they do anything for you?

"A The insurance people wouldn't let them.

"Q The question was, did they do anything for you there?

"A They took tests, minor tests.

"Q Did you go to any other hospital?

"A Marine Hospital.

"Q Where?

"A Staten Island.

"Q Did they do anything for you there?

"A Yes, sir.

"Q What did they do for you there?

"A Gave me a second operation.

"Q Where?

"A The same arm.

"Q What was that operation for?

"A The use of the wrist, the finger and the thumb.

"Q What operation did they perform on you?

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"A I don't know. I don't know the name.

"Q How long were you there?

"A As a patient?

"Q Yes. Do you know the dates?

"A I can't remember the dates.

"Q The year?

"A The year? '72.

"Q And any other hospitals than the ones that you have told me, Polyclinic, Doctor's, NYU and Marine Hospital?

"A No.

"Q Have you seen any other doctors other than the ones that you have mentioned here for your left arm?

"A Yes, I saw quite a few doctors, but I can't recall.

"Q Whom do you have an oppointment with on December 18th.

"A I got it in the Marine Hospital.

"Q When was the last time you saw a private doctor for treatment of your left arm?

"A I can't recall.

"Q Was it this year, within the last month or so?

"A No, the insurance people won't pay for it.

"Q Will you just answer my questions, please? When was the last time you saw a private doctor for the treatment of your left arm?

"MR. DANAHAR: He said he can't recall.

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"Q Was it this year?

"A No.

"Q '72?

"A I can't say.

"Q '71?

"A I believe it was '72, if you want me to put it that way.

"Q Do you remember the name of that doctor?

"A No.

"Q Since this accident happened on October 18, 1970, have you returned to work at anytime?

"A Yes, sir.

"Q When did you go back to work?

"A Nine months after the accident.

"Q Would that have been July of 1971?

"A June or July.

"Q June?

"A June or July.

"Q Whom did you go to work for?

"A Great Lakes.

"Q Same job?

"A No, sir.

"Q What job did you go back to work at for them?

"A I believe watchman.

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"Q What was the salary as a watchman that you went back to work for in June of '71?

"A I can't recall.

"Q Do you have any idea whether it was more or less than the $295 you were making at the time this accident happened?

"A It was less.

"Q Do you have any idea how much less?

"A Can I put it this way: For the hours I worked or for the rate of pay?

"Q You told me that at the time the accident happened you were making, I think, $295 for a seven-day week; right?

"A Right.

"Q When you went back to work in June of '71 as a watchman what were you making for a seven-day week?

"A I worked six 8 hour days and one 12 hour day.

"Q Tell me how much you made in that period of time.

"A I believe about $3300."

MR. COHEN: That should be --

MR. DANAHAR: That should be $330.

THE COURT: All right, let's go ahead. Next.

"Q So that is $300 for a seven-day week?

"A With overtime.

"Q Any way you want to put it it is $300 for a

seven-day week with overtime; is that it?

"A Yes, sir.

"Q Do you know how many hours were involved in that week, how many hours you were working?

"A Straight time? Do you want to put it that way?

"Q I want to put it any way you want to put it.

"A If you want it straight time, it comes out to --

"MR. DANAHAR: Look at the papers.

"A No, they don't count for that --

"MR. DANAHAR: These don't --

"A These don't count for that. For the hours I worked 60 hours for the watchman.

"Q So for 60 hours you made $300; is that right?

"A Right.

"Q Did you continue to work at that pay scale?

"A Only for a couple of weeks.

"Q A couple of weeks in June of '71?

"A June or July, yes.

"Q What happened then?

"A The other man came back and they layed me off.

"Q When were you layed off, in July of '71?

"A I can't recall whether that was July or August.

"Q Did there come a time when you went back to work after that?

"A Yes, sir.

"Q When was that?

"A I went back to work for a week or ten days. No, not even a week. A couple of days.

"Q What month was that, July or August, or some other time?

"A No, some other time. September, say.

"Q How much did you make for that period of time?

"A I can't recall.

"Q Was it as a watchman?

"A No.

"Q What did you go back to work as?

"A Deck hand. No, day man.

"Q How much did you make as a day man?

"A That would be '71, $325.

"Q $325 are you saying?

"A Yes.

"Q For a seven-day week?

"A Right.

"Q How long did you make that? For what period of time?

"A I can't say. I think it was three weeks.

"Q Then what happened?

"A I got layed off again.

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"Q How long were you layed off the second time?

"A Until after Christmas.

"Q Of '71?

"A Yes.

"Q Did there come a time when you went back to work again?

"A January 15th, I believe.

"Q '72?

"A '72.

"Q You went back to work for Great Lakes?

"A Yes, sir.

"Q What kind of a job did you get then?

"A Day man.

"Q How much did you make at that time?

"A I was working six days a week on that job.

"Q All right, six days. How much did you make?

"A $249.

"Q How long did you continue to work as a day man at $249 a week?

"A Until May.

"Q That is from January '72 to May of '72?

"A Right.

"Q What happened in May?

"A I went back into another operation.

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"Q After that operation was performed did there come a time when you went back to work again?

"A Five months later.

"Q When would that have been?

"A October. September or October.

"Q Of '72?

"A Yes, sir.

"Q Did you go back to work for Great Lakes?

"A Yes, sir.

"Q What job did you get then?

"A Same job, day man.

"Q How much were you getting then?

"A Same rate, $249.

"Q How long did you work as a day man in September of '72?

"A Worked a couple of months, and then got layed off.

"Q That would take us up to November of '72; is that right?

"A Yes. Sure.

"Q What was the reason you were layed off at that time?

"A No work for me.

"Q Did there come a time after that when you went back to work again?

"A Yes, I did go back to work.

"Q When was the next time you went back to work after November of '72?

"A Maybe a couple of months. I went back to work for the same company, Great Lakes, as a day man."

MR. COHEN: Your Honor, would this be the time to suspend?

THE COURT: You finish. A great deal of this is totally unnecessary. I have asked that lawyers sit down and pick out portions of the deposition, and we have to sit here and have a lot of this stuff read. Entirely unnecessary, and not helpful at all, but there it is when you don't listen to the Judge and try to figure out some other way.

You finish that deposition. Now I want you to get through with it.

MR. COHEN: All right.

"Q Was it at the end of '72 or the beginning of '73, do you know?

"A The beginning of '72, I believe.

"Q How much did you make as a day man at that time?

"A $271.

"Q For a six-day or seven-day week.

"A Six days. I have been working six days.

"Q $271?

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"A Yes.

"Q How long did you continue to work, starting --

"A Until about now.

"Q So you have been working from January '73 right up to the present day?

"A I was layed off for five weeks in the meantime.

"Q When was that, do you know?

"A Just six weeks ago, eight weeks ago.

"Q But other than that five-week period have you worked steadily from January '73 up to this date as a day man?

"A Yes, sir.

"Q At $271 a week?

"A Yes, sir. It varies. Sometimes I'm on a seven-day a week job, so that is $354.

"Q It is now $354?

"A For a seven-day week.

"Q Do you know how much money you made in 1969 for the entire year?

"A Yes. Can I have my --

"Q Your income tax return?

"A Yes, sir. '69. $11,656.

"Q Do you know how much you made in '68?

"A $10,780 something."

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MR. DANAHAR: And I added, "$738 which would make-up a total $10,738."

THE COURT: Let me see that. All right, go on with your questions.

"Q Did you ever hurt your left arm before October 18, 1970?

"A No, not that I can recall. No.

"Q Did you ever have any kind of an accident involving your left arm?

"A Never what I can recall, no.

"Q Since October 18, 1970 have you injured your left arm in any other accident?

"A Yes.

"Q You have?

"A Yes.

"Q When was that?

"A About '72.

"Q What happened at that time?

"A I fractured it.

"Q Your left arm?

"A The wrist.

"Q How did that happen?

"A I slipped.

"Q Were you working for Great Lakes at that time?

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"A No.

"Q Where did you slip?

"A Where?

"Q Yes.

"A At home.

"Q In your own house?

"A Yes, I believe.

"Q And you broke your left wrist?

"A I fractured it.

"Q Your left wrist?

"A Yes, sir.

"Q Did you injure any other part at that time?

"A No.

"Q Did you go to any hospital?

"A Marine Hospital.

"Q Is that Staten Island?

"A Yes.

"Q How long were you treated for that injury?

"A One hour.

"Q One hour?

"A All they did was put a cast on.

"Q How long was it in a cast?

"A Six weeks.

"Q Did you ever injure your left arm at any other

time other than October 18, 1970, and this accident you just told me about in 1972 in your home?

"A You mean did I hurt it?

"Q Yes.

"A Where it would cause pain?

"Q Did you ever have an accident or an injury to your left arm?

"A By injury, the word 'injury' is in quotes, I don't understand what you mean. Where I lost time, or where I had to be back to the hospital?

"Q Any injury. Did you ever hurt your left arm?

"A Many times.

"Q Tell me about it.

"A Holding my son, the arm, you know, you just get terrible cramps and you can't do nothing.

"MR. DANAHAR: He is talking about before. No, he is talking about now.

"Q I am talking about an accident or an injury. Not just if your arm hurts picking up your son. You told me in addition to this accident of October 18, 1970, which is the subject of this lawsuit, that you fell down in your house and you fractured your left wrist; right? In '72?

"A Right.

"Q I am asking if you have had any other accidents

or injuries to your left arm other than those two?

"A No, not that I can recall.

"Q That is what I want to know. Not if it hurts you if you hold your son.

"A You asked me any injury. Injury means pain or suffering.

"Q No, I mean accident.

"MR. DANAHAR: He misunderstood you.

"Q Now going back to the time that your accident happened, was this tugger machine working all right as far as you know? Did you have any problems in operating it at the time of your accident?

"MR. DANAHAR: I object to the form of that question.

"Q Are you claiming --

"MR. DANAHAR: First of all you asked two questions at the same time.

"Q Are you claiming that there was anything defective in any of that machinery that you were operating at the time your accident happened?

"A I don't understand exactly what you mean by that.

"Q Well, you were operating a winch, were you not?

"A Yes, sir.

"Q Was it operating all right at the time that this

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line was going under the drum and around the drum of the winch?

"A You mean the winch itself or the wire?

"Q The machinery. It's not the wire, the machinery that you were operating.

"A I'm not an engineer. I cannot say.

"Q As far as you could tell was it operating --

"A It ran.

"Q Did you have any difficulty in operating it at the time this accident happened?

"MR. DANAHAR: How do you mean by 'difficulty'?

"Q Are you making any claim that that piece of machinery was defective in any way?

"MR. DANAHAR: He said he is not an engineer, he can't tell.

"A If you want my opinion and you're not going to put it on --

"Q I am asking you if you are making any claim, that is all, that the machinery you were operating at the time your accident happened was defective in any way?

"A You are asking if the machine wasn't any good? Okay, I can tell you.

"MR. DANAHAR: Tell us.

"A If you didn't keep it, you know, in --

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"Q If you want --

"A If you didn't keep it in --

"Q Keep it in? Is that what you are saying?

"A Keep it running, sometimes she gets stuck and she would just keep running. Other times she would just release air.

"Q What?

"A Air. It runs by air. If it had a sudden burst of air it would pickup fast.

"Q Go ahead.

"A Or it didn't run at one constant speed, in other words.

"Q While you were operating it did it run at a constant speed?

"A I can't recall.

"Q Did it run fast or slow?

"A I can't recall.

"Q That is what I meant, did you have any problem operating it?

"A I thought you mean in the years I had been on the machine.

"Q No, on the day that your accident happened.

"A I can't recall on that day.

"Q So you can't recall whether it went fast or slow

or maintained a speed?

"A I can't.

"Q At the time that your hand got caught did it go fast or slow, or was it just going at the same pace?

"MR. DANAHAR: He has just testified he can't recall whether it went fast or slow.

"Q Now I am asking at the time of the accident.

"A I can't recall.

"MR. DANAHAR: He said the whole day he can't recall."

MR. COHEN: "All right, he can't recall.

"Q Did you operate that machine before October 18,1970?

"A Many times.

"Q How many times?

"A I cannot say.

"Q Did you ever notice that it operated fast or slow or any way that wasn't even or usual at any other time?

"A I believe so.

"Q Do you recall when that was?

"A No.

"Q Was it once or more than once?

"A I cannot say that, either.

"Q At the time that you noticed it what did you notice about it, about the operation of the machine?

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"A It just seemed to run funny.

"Q Too fast, or too slow? What do you mean by 'funny'?

"A High.

"Q You say it was an air machine?

"A Yes, it ran by air.

"Q So when you pulled the lever --

"A It ran.

"Q [continuing] air was injected into it?

"A Yes, through a hose.

"Q This lever, did it have various speeds on it, or just one speed?

"A I believe it was only one speed.

"Q So when you pulled the lever, how did you pull it, toward you or away from you?

"A It all depends on where you were going. If you want to reverse or forward.

"Q Let's say forward, which way do you push the lever for forward?

"A Toward you.

"Q And for reverse?

"A The opposite way, I believe.

"Q So it was one speed in each direction; is that it?

"A I believe so.

"Q So once you put it in that speed it operates?

"A Why, I believe so.

"Q You didn't have any control over it after that, did you?

"A Yes, your hand.

"Q Once you put it in that speed it would either go forward or go in reverse, but you didn't have any control over the speed at which it operated, did you?

"A Not really.

"Q Are you saying that on past occasions when you put it in either forward or reverse that sometimes it would go slower or faster? Is that what you are saying?

"A On past occasions you mean if it would skip, jump?

"Q That is what I am asking you. Is that what happened?

"A I believe so, yes.

"Q Did that happen to you on past occasions?

"A I just said yes.

"Q In any event, you don't recall anything like that happening on the day of the accident?

"MR. DANAHAR: I object to that. He has already testified to that."

MR. COHEN: "All right, you can object to it, but --

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"MR. DANAHAR: I instruct him not to answer it because he has answered it a couple of times."

MR. COHEN: "That won't get you anywhere, instructing him not to answer.

"MR. DANAHAR: Yes it will, he won't answer it."

MR. COHEN: "Did we enter into the usual stipulations here?

"MR. DANAHAR: Yes."

MR. COHEN: "Then you can't instruct him not to answer it.

"Q Will you answer my last question?

"A Can you repeat it?

"Q That didn't happen on the day of this accident?

"A I cannot say."

MR. COHEN: That is all.

THE COURT: The testimony was concluded at 3:25 p.m. and, as I told you before, ladies and gentlemen, it is considered it was signed by Michael T. Anderson and sworn to and subscribed before Mr. Danahar on the 11th day of January, 1974.

Gentlemen, your estimate of the proof, of the time the proof will take, is far off. You didn't intentionally do it, but you really did not estimate your time correctly. You have spent an inordinate amount of time,

for instance, on the deposition, that could have been avoided, in the light of what you know what the Court thought the jury should hear on that deposition.

However, it has been done, the deposition is finished, we won't touch that any more by way of further testimony insofar as the deposition is concerned. You will have the right to call Mr. Anderson back and complete his testimony tomorrow morning.

I am going to ask you to step inside to the robing room where I can talk very plainly with you, because I intend to tell these ladies and gentlemen what I think is the time that is going to be required of them in this case. I am going to be mighty sure that I insist upon you being far more accurate than you have been up to now.

Please join me in the robing room and, ladies and gentlemen, would you be good enough to wait.

[Brief recess]

THE COURT: The attorneys have miscalculated sadly. I am going to insist that they spend this evening whittling down to proper size those things that must be conceded because they are matters that are as well known as day follows night, and there should not be any need to adduce any proof about them.

I am directing that the lawyers sit down and

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whittle down to basics those things that can be recited to the jury without hours being spent needlessly. I have already told them that in the robing room. This inconveniences me as much as it does you.

There are people waiting for their trials who are languishing in jail, and I have committed myself to them for their trials, and the failure of counsel on both sides to be more accurate has thrown me off enormously. I am not going to let them take up our time on things that they can and should resolve.

Now, let me say to you: Is there anyone here who for any reason, medical or otherwise, or has any kind of plan at home that interferes, children or so forth, is there anyone who cannot possibly come tomorrow morning at 9:30 and and start at 9:30?

If I should decide as the proof goes on, because I don't know how this is going to go, I cannot deprive the litigants, I am not talking about the lawyers, I cannot deprive the litigants of their day in court. No matter how much I like it or don't like it. It is in my blood. That is the way every Judge is who deserves the name Judge to be applied to him.

If I should decide as things go tomorrow to hold you over in the evening so as to complete the testimony as

much as humanly possible, I will see to it that you are taken home in a limousine. I don't want anybody going home in fear, but I want you to know there is a possibility of that.

If I can't send you home ina limousine, you will be out of here by 5:00 o'clock. So, we will start at 9:30. There is a possibility we will be taking proof into the late hours. We will then go over until Tuesday and try and finish up the case. Even on Tuesday we may have to operate until late hours. There is a summation yet, there is a charge of the Court, there is proof by the defendant.

That is it, ladies and gentlemen. I know of no other way than to just level, and that is the way I have always been. I level with a defendant, I level with a jury, I try to level with anybody I deal with. It is your problem as much as mine. I am no magician.

I repeat, the lawyers mean well, they didn't do this purposely, but they have erred sadly in many respects.

Good night, ladies and gentlemen. I will see you tomorrow morning at 9:30.

(Jury leaves the courtroom)

THE COURT: The attorneys are directed by the Court to get together this very evening, if not this evening then right now, until completion of the items that they know

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full well without a detailed recital the Court expects them to agree upon by way of stipulation, to avoid the taking of proof on issues that are fundamental, that require work on both of your parts, and don't try to get rid of it by throwing it onto the Court and jury.

You will just have to sit down and figure out that stipulation to the best of your ability consulting the records.

Now, do we understand each other, Mr. Danahar?

MR. DANAHAR: Yes, your Honor.

THE COURT: Do you understand it, Mr. Cohen?

MR. COHEN: Yes, sir.

THE COURT: And I would like to have that done so it can be placed before the jury tomorrow morning.

Next, you will have your witnesses ready, all except the doctor, who goes over until next Tuesday, and you will try to figure out what you need to ask these witnesses, so that we don't ramble and that you come to the main issues.

I am going to ask cross-examination be something other than a fishing expedition, and that you attempt to remember that the jury has had an enormous load to carry by reason of what has taken place here with Anderson on and off the stand, with his being interrupted. That is a

great deal to ask of a lay body. You are asking them to concentrate and to follow.

So we may very well get into the defense tomorrow. I want to warn you that if I find we can do it we will go as far as we humanly can tomorrow, and tomorrow evening.

MR. COHEN: Your Honor, I have a witness here under subpoena. Could your Honor direct him to come back tomorrow, please?

THE COURT: Yes, sir. Bring him in and I will direct him.

Mr. Ramos, this case has been very extensive. There is a lot of proof being taken. We haven't been playing a game here. Not every witness can be called to the stand at the same time.

Do you understand that?

MR. RAMOS: Understood.

THE COURT: You come here tomorrow by direction of the Court, and if you fail to be here at the time I fix I will hold you in contempt. You need no subpoena when I direct you in open court and on the record to be here.

Give you full name.

MR. RAMOS: Arthur Ramos.

THE COURT: What is your address?

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MR. RAMOS: 395 Everton Avenue.

THE COURT: You can't possibly get to him before 2:00 o'clock tomorrow. There is no sense in having him wait around here in the morning. Is that not so?

MR. DANAHAR: No, I think it is possible we could, your Honor.

THE COURT: All right. Good. I live in hope.

Mr. Ramos, you be here tomorrow morning, but no earlier than 11:30.

MR. RAMOS: No earlier than 11:30.

THE COURT: Be here at 11:30 tomorrow. Will you do that?

MR. RAMOS: Sure will.

THE COURT: Very well.

I am asking counsel further to try to figure out how they can reduce to a minimum the amount of time each witness is required. You can do that by going over in your minds meticulously what it is you wish to bring out so there will not be time wasted as you reach out for thoughts that you think you might like to tackle. Have your thinking done in advance of your calling of the witness.

MR. DANAHAR: Your Honor, I could being up a subject right now which if we can agree on it it would eliminate one of the depositions.

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THE COURT: What is that?

MR. DANAHAR: I want to put in evidence the accident report.

THE COURT: What about it, Mr. Cohen?

MR. COHEN: I think that employer's first report of accident is -- the statute specifically says it cannot be used for any purpose in any case whatever. I can give your Honor the citation.

THE COURT: So you are going to object to it; is that right?

MR. COHEN: Yes, sir. I can give your Honor the citation. I can give it to Mr. Danahar too.

THE COURT: What exactly is the report, Mr. Danahar? It is a report of what?

MR. DANAHAR: Of the accident.

THE COURT: By which company?

MR. DANAHAR: Great Lakes.

THE COURT: They made a report?

MR. DANAHAR: Yes, sir.

THE COURT: Of the accident?

MR. DANAHAR: The captain made up a report of the accident, that's right.

THE COURT: And, Mr. Cohen, you say that that is inadmissible?

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MR. COHEN: This report was made to the Department of Labor pursuant to the Longshoremen & Harbor Workers Compensation Acts, and Section 33 USCA Section 930, Subsection C specifically states that such a report cannot be used in any proceeding for any purpose.

THE COURT: All right. What do you say to that, Mr. Danahar? How about it? Have you got an answer? Have the answer for me tomorrow. That is your job. I want to know on what authority you maintain that you are entitled to have that report go in, and what is your answer to the opposition.

Now, what else did you want to say?

MR. DANAHAR: That's all I want to say.

THE COURT: Will you please review those depositions and find out just how much of those depositions you need to actually read, and not just read them on and on with a lot of twaddle and unnecessary material. Just pick out the highlights of it, that which counts, and be content with that rather than say, "I would like to read," as you said in the robing room, "The whole deposition of this one and the whole deposition of another."

I very seldom know of any such need of reading a whole deposition. Cull it out, cull out the portions that you think are essential. Sure that takes time, sure it

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takes work on your part. That is what you are supposed to do.

Good night.

[Time noted: 5:00 p.m.]

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Michael T. Anderson

-vs- 71 Civ. 2910

Great Lakes Dredge & Dock Co.

New York, New York
February 14, 1974--9:30 a.m.

[In open court - jury present]

THE COURT: Good morning, counsel, good morning ladies and gentlemen of the jury.

Mr. Cohen, I understand you wanted to say a word or two before we begin.

Step up with the reporter and your opponent.

[At the side bar]

THE COURT: Yes, Mr. Cohen?

MR. COHEN: Judge, I think this can be off the record. I heard from Chicago, and I thought I would let you know what they said. I would like to do it in the robing room.

THE COURT: All right.

[In open court]

THE COURT: Will you keep your seats, ladies and gentlemen.

[Court and counsel retire to the robing room]

THE COURT: Mr. Cohen, have you any further

cross-examination of the plaintiff?

MR. COHEN: I just have a few questions, your Honor.

THE COURT: Come back, Mr. Anderson.

M I C H A E L T. A N D E R S O N, the plaintiff, called as a witness, having previously been sworn, testified further as follows:

CROSS-EXAMINATION [CONTINUED]

BY MR. COHEN:

THE COURT: Mr. Anderson, under the law I must tell you that you are continuing with your testimony under oath without the necessity of being re-sworn.

THE WITNESS: Yes, sir.

THE COURT: All right, Mr. Cohen.

BY MR. COHEN:

Q Mr. Anderson, so that you will understand what I am talking to you about let me read back to you a few of the questions and answers from your deposition, because it is on that subject that I am going to ask you some questions. All right?

I am reading from page 29.

"Q Now, Mr. Anderson, I am asking you about the wire itself. Do you know any reason why that wire would catch your hand?

"A Yes. It could have had a fishhook in it.

"Q Did it?

"A I cannot say.

"Q You didn't see any such thing, did you?

"A I truthfully can't say."

MR. DANAHAR: Your Honor, I object to this. He is just rehashing what has been gone over a number of times.

THE COURT: Mr. Danahar, I have got to allow him to present his question. That was read to the jury yesterday, but he says, I want to call your attention to something that I am going to inquire about, and then he reads a portion of it. He has not really put his question yet. The jury heard that, so there is nothing new.

All right, go ahead.

"Q That is all I am asking.

"A I can't say if I slipped, either.

"Q Can't say what?

"A Slipped.

"Q Are you making any claim that you slipped here?

"A No. I'm making no claim that I slipped. But you are working in the water."

Now, Mr. Anderson, with respect to that testimony, when you said "But you are working in the water" did you mean that there was water in the cab where you were working?

MR. DANAHAR: Objection, your Honor.

THE COURT: The objection is sustained. It was entirely unnessary to rehash all that testimony in order to ask him a question about water. You could have put the question very directly to him: Was there water in the cab, or anything like that at the time?

THE WITNESS: In the cab? No.

THE COURT: Well, what did you mean when you said, water, on your deposition? What were you referring to?

THE WITNESS: The body of the dredge itself, the whole barge.

THE COURT: Was in water?

THE WITNESS: Yes, it's contained in water. Yes, sir.

THE COURT: Is that what you meant?

THE WITNESS: Yes, your Honor.

THE COURT: Next question.

BY MR. COHEN:

Q And as a vessel in water was the dredge subject to movements with the motion of the water?

MR. DANAHAR: Objection, your Honor.

THE COURT: Overruled.

Did the dredge move with the water, depending on how the --

THE WITNESS: Can I answer in my way?

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THE COURT: Yes, you have got to. You are the witness.

THE WITNESS: When you are in-between two piers you don't get no -- there is no friction in the water. The tide don't bother you inside the pier. A tugboat might go past, sure, but that's the only --

THE COURT: Wait a minute. Let him finish. That is the only what?

THE WITNESS: That's the only way you will get any friction in the water.

THE COURT: Are you finished?

THE WITNESS: Yes, sir.

THE COURT: Next question.

BY MR. COHEN:

Q You mean a passing boat could go by that would setup a swell in the water that could affect the dredge make it move?

A Again, may I answer in my own --

THE COURT: Yes, sir.

A It depends how big the tug is and how fast she was going.

THE COURT: All right. Next question.

Q Mr. Anderson, did you at anytime since your accident happened, have you at anytime stated to anybody

that at the time of the accident there was some motion in the water that caused the dredge to move and that caused you to fall into the drum of the winch?

A No.

Q Did you at anytime make such a statement to anybody?

A No.

MR. COHEN: Thank you. I have no further questions.

THE COURT: All right. Is there anything further, Mr. Danahar?

MR. DANAHAR: No, your Honor.

THE COURT: Very well. Step down, Mr. Anderson.

[Witness excused]

THE COURT: Next witness, Mr. Danahar, please.

MR. DANAHAR: Your Honor, at this time I would like to read from a deposition.

THE COURT: Yes. What deposition is it?

MR. DANAHAR: That was taken of the defendant by the captain of the dredge, Capt. De Graff.

THE COURT: All right. Ladies and gentlemen, you remember the captain's name was Capt. De Graff. He was deposed, he was examined before trial just the way the plaintiff was examined before trial. I have already explained that is the right under the law, to examine witnesses in advance. The whole purpose is to find out how it can be

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reduced to its simplest terms for trial, otherwise we would be here for three months.

All right.

MR. DANAHAR: Now, I have tried to comply with your Honor's direction.

THE COURT: Thank you, sir. Read it clearly and distinctly, will you please, sir?

MR. DANAHAR: Deposition of defendant Great Lakes Dredge & Dock Company by George De Graff, taken by the plaintiff, pursuant to notice held at the office of Alexander, Ash, Schwartz & Cohen, and so forther, on January 7, 1974 commencing at 2:00 p.m.

Appearances, Matthew L. Danahar, for the plaintiff, Alexander, Ash, Schwartz & Cohen for the defendant, and Albert V. Testa, of Counsel to Alexander, Ash, Schwartz & Cohen.

Shall I read the stipulation, your Honor?

THE COURT: I think you should. I have never seen it before. You ought to know.

MR. DANAHAR: All right.

"It is hereby stipulated and agreed, by and between the attorneys for the respective parties hereto, as follows:

"That certification and filing be and the same hereby are waived; that all objections except as to the

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question are reserved to the time of trial; that the witness may subscribe and swear to his testimony before any Notary Public with the same force and effect as though sworn to before a Justice of this court and a copy of the transcript of this examination shall be furnished without charge to the attorneys for the defendant."

Your Honor, I realize at this point that I am reading from a copy that was sent to me, and I really should be reading from the original, so I ask Mr. Cohen now to produce the original of Capt. De Graff's deposition.

MR. COHEN: I have the original here. It is the only copy I have.

THE COURT: Turn it over to counsel. He is reading to the jury. Let him read from the original, and you hand Mr. Cohen your copy.

MR. COHEN: I have marked it up for my reading purposes. I have circled certain things. There have been no changes made. I will stipulate that everything that is in Mr. Danahar's copy appears in the original. May I keep my copy?

THE COURT: May I inquire by what right you touched original of the deposition?

MR. COHEN: I changed nothing. I made marks on the cover to indicate where I want to read.

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THE COURT: All right. Turn over the original to Mr. Danahar, please.

MR. COHEN: May I have his copy to follow --

THE COURT: I said that a moment ago.

MR. DANAHAR: Well, the only problem there, your Honor, is, you see on my copy --

THE COURT: That should have all been ironed out before we even opened court. That is what you should have done last night. That is what I asked you both to do last night. You are not going to waste the Court's time and the jury's time about details that you two should have taken care of. I have been pleading for that since we began this trial. Now it has got to stop.

We are not supposed to pick up your mess. You are supposed to have it clean-cut. What is that you want the jury to listen to? Now go ahead. Let me see that deposition so I can see what marks were made on it. Turn it over to the Clerk.

MR. DANAHAR: This is my copy, your Honor.

THE COURT: Turn it over to the Clerk. You are supposed to have had the original. Is that the original?

MR. DANAHAR: That is not the original, that's my copy.

THE COURT: I asked you to take the original.

MR. DANAHAR: Your Honor, I just tried to explain to you that when you asked for that deposition that it was my copy.

THE COURT: You are still protesting? I am going to put you right in your place, mister. When you got up to read that deposition you should have had, number one, the original, number two, you should know exactly what it is that you want to read, number three, you should have taken it up with your adversary like I pleaded with you to do so last night so that there would be no issue whatsoever. You are the one who said, Judge, I am going to read from a copy, I should have the original, I ask Mr. Cohen for the original.

Mr. Cohen, I must say that your markings on the original deposition are unwarranted and uncalled for.

Mr. Clerk, your will please take possession of this and make it a part of the Court's file.

I notice that no words have been stricken so far as my cursory examination discloses, but portions of the deposition have been underscored. The rule is not to touch, not to touch the original of a deposition. I regret that that was done.

Now, Mr. Danahar, you have the original of Capt. De Graff's deposition. It is being turned over to

you by the Clerk right in my presence. Take it, please. Turn over your copy of Capt. De Graff's testimony to your opponent.

xx [Original of deposition marked Court Exhibit 1 in Evidence]

THE COURT: Now, read from the original whatever you feel you want to read.

MR. DANAHAR: Your Honor, may I say something? On my copy I have, pursuant to your Honor's direction, indicated the pages I don't want to read. So I will have to ask Mr. -- go back to the copy to skip pages. That's all --

THE COURT: You should have done that last night. You should have had a little piece of paper indicating what pages or what lines you were going to read. Now we shouldn't be sitting here waiting for you to figure it all out.

MR. DANAHAR: May we stand together then, your Honor?

THE COURT: Yes, go ahead.

MR. DANAHAR: "Question: Will you please state your name and address for the record?

"A George L. De Graff; 4239 Darley Road, Baltimore, Maryland."

Page 4.

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"Q Now, when you first started to work for Great Lakes, in what capacity did you work?

"A Captain."

Should I read question and answer, your Honor?

THE COURT: I don't care.

MR. DANAHAR: "Question: Captain of Dredge No.50?

"A That's right.

"Q Did you have experience with Torendo Corporation as a captain of dredges?

"A I have been a captain of dredges since '51, and I had been on this particular one since September of '65.

"Q When you say 'this particular one' do you mean Dredge No.50?

"A Yes. It was then known as Dredge Baltimore.

"Q Did you remain captain of Dredge No.50 from the time you joined it up until the time you retired?

"A Yes, sir.

"Q Now, what were you duties as captain of the dredge?

"A The duties of a captain on a dredge?

"Q Yes, not on a dredge, this particular dredge.

"A On this particular dredge it was to make sure that I had a full crew at all times, that the work went along according to the plans set out by the office and keep the equipment in good repair, in general, just like an overseer.

camds 200 "De Graff"

"Q What hours would you work?

"A My regular hours were from 8:00 to 4:00, but I was there in case anybody wanted me. I stayed aboard the dredge and I was there if they wanted me in the middle of the night.

"Q Now, specifically when you were aboard the dredge what were your activities?

"A Check on things, look things over and give people work to do. In other words, give orders, instructions.

"Q Were you the one that assigned the work for the men to perform on the dredge each day?

"A Yes.

"Q Would you give the assignment to each individual man? Or would you give the assignment to a mate who, in turn, would call on the men to do the work?

"A If the dredge was in operation you can talk it over with the operator, and then you give your orders to them or the mate, either one."

To page 7 now, your Honor.

"Q Now, getting back to the date of October 18, 1970, do you recall an accident to a crew member named Michael Anderson on that date?

"A Yes.

"Q Were you aboard the dredge at the time?

"A I was aboard the dredge at the time.

"Q Could you tell me who else was aboard the dredge at the time of the accident?

"A Well, there was Mr. Edward Ducey, he was an operator, and Arthur Ramos was the mate, and Michael Anderson and Bruce Anderson, and then we come to an engineer, I'm not quite sure, but I think it was Norman Herbert. Now, I could be wrong on that.

"Q At approximately what time of the day or night did the accident happen?

"A It happened in the morning, I should judge sometime around 10:00, 11:00 o'clock. Something like that.

"Q Was the dredge tied up to the dock at the time?

"A No, sir."

Page 10, your Honor.

"Q Now, who was next in line to you as far as supervision is concerned?

"A The operator on the watch.

"Q Who was next in line after the operator?

"A It would be the mate on watch.

"Q Which in this case was Ramos?

"A Yes.

"Q What time did you come to work that day, if you recall?

"A Well, 7:30, when the crew came aboard, I was

camds 202 "De Graff"

already there.

"Q What time did they come on board?

"A About 7:30.

"Q They all come aboard about the same time?

"A They had to catch the same boat to come out on.

"Q After the crew boarded the vessel did you give any orders to them?

"A Yes.

"Q Or to anybody?

"A Well, after they came aboard, changed clothes, then we all got around and I told them what I wanted done.

"Q Were they all together at this point when you told them what you wanted done?

"A I couldn't say whether they were all together or not, but I gave my orders to Eddie Ducey and Ramos and whoever else was around.

"Q But you do recall that you did give orders specifically to Ducey and Ramos as to what you wanted done?

"A Yes.

"Q Whether or not any of the other crew members were there at the time you are not sure at this time; is that correct?

"A That is correct. I'm not even sure that Arthur Ramos was there. Now, there were men there, but individually

camds 203 "De Graff"

who they were I can't tell you. I do know that I did tell Eddie Ducey.

"Q What orders did you give them?

"A I told them I wanted the holding wire turned end from end."

Skipping to page 17, your Honor.

"Now, on October --"

THE COURT: Question.

MR. DANAHAR: "Question: Now, on October 18, 1970, the job that you had ordered to be done was not to change the holding cable, but to turn it around?

"A To turn it end for end.

"Q Tell us how that is done.

"A It's done by disconnecting one end of a wire from the drum itself.

"Q Where is the drum itself located?

"A The drum is in the whirley, in the cab. Then when it's disconnected from the drum there's a small wire. First a Chinese Finger possibly is attached to it, and this small wire which we call a tugger wire is attached to the end of the large bucket wire. The bucket wire is then slacked out over the end of the boom and it's dropped in suitable position, most generally on the deck of the scow.

"Then the tugger wire is then taken to the other end

camds 204 "De Graff"

of the wire which has been disconnected from the bucket, and then this tugger wire is made fast to that end, the end of the wire that came off the bucket, and then the procedure is just reversed.

"The end that came from the drum is then socketed and placed on the bucket and operations are resumed.

"Q How many men are used in this operation of turning the --

"A The operator, mate and two deck hands.

"Where do each one of these individuals --

THE COURT: Question.

MR. DANAHAR: "Question: Where do each one of these individuals perform their respective duties in connection with this operation?

"A Wherever they are told to. The operator would then take charge of the operation and he would detail the men to the different jobs, and so forth."

Page 23, your Honor.

"Q Do you know who the tugger operator was on October 18, 1970?

"A It was Mike Anderson.

"Q At the time this accident occurred do you know where he was?

"A Just that he was by the tugger. I don't know his

position by the tugger because I didn't see it.

"Q Was there anybody in the cab with him at the time of the accident? If you know."

Mr. Testa said, "Of your own knowledge."

"A I do not know.

"Q Do you know that there was nobody with him?

"A I do not know.

"Q At the time of Anderson's accident where were the other men located?

"MR. TESTA: Again, if your know.

"A I do not know.

"Q Where were you at the time of Anderson's accident?

"A In my office.

"Q Where is your office located?

"A After end of the dredge on the starboard side, up on top deck."

Page 25.

"Q Between the time that the work started and the time of the accident did you see any of the other crew members besides Anderson in the cab where the tugger winch is located?

"A I told the men to do the job and I went to my office and I let them proceed on with their business.

"Q Now, in giving the order to the operator to do

camds 206 "De Graff"

this particular work that was involved, did you give him any instructions as to how it should be done?

"A No, sir.

"Q Did you give him any instructions as to where each man should perform his work?

"A No, sir.

"Q Did you give any instructions to have more than one man assist in the operation of the tugger winch?

"A No, sir.

"Q On prior occasions whenever it was necessary to use this tugger winch, either in changing a cable or reversing it, was there ever more than one man used in the cab in the operation of the tugger winch?

"A I would tell the operator that I wanted a job done. It was up to the operator how the job was done so long as it was done. I had all experienced men and I saw no reason to tell them, put one man here and one man some other place. It was just a question of telling the operator I wanted a job done, and that was it.

"Q Did you ever on any occasion prior to this accident see more than one man assigned to the operation of that tugger wire when this type of work was being done?

"A I would say I probably have. To my certain knowledge I couldn't pinpoint a date or anything of that sort.

camds 207 "De Graff"

"Q Approximately how many times did you see that?

"A I wouldn't even hazard a guess."

Page 27.

"Q Did they ever have more than one man to your knowledge up in the cab assisting in the operation of the tugger winch itself and giving signals to anybody on deck when this type of work was being done?"

Mr. Testa said, "You are talking about turning the cable end for end."

And I said, "The cables, yes. What they were doing on this occasion.

"MR. TESTA: On the occasion of the accident."

And I said, "Yes.

"A It is possible. I don't say that it was regular procedure, but each crew has their own way of doing different jobs. This was one job. Each one of them had their own way of doing it, and I didn't exactly check on them because I knew that the job was going to be done.

"Once this job was started on October 18, 1970, did you do any checking --

THE COURT: Is that a question? I couldn't tell whether that was a continuation of the answer.

MR. DAMAHAR: I am sorry, your Honor.

THE COURT: That is all right.

camds 208 "De Graff"

MR. DANAHAR: "Question: Once this job started on October 18, 1970, did you do any checking of the work that was in progress?

"A No.

"Q Was there any method of signaling the tugger operator other than by yelling to him from out on deck on this particular day?

"A On this particular day, no."

Page 32.

"Q While you were the captain of the Dredge No.50, and prior to the accident, did you ever know of any occasion when an operation of the kind that was going on at the time the accident was in progress, that one of the crew members was stationed at that door at the forward end of the cab in order to give signals to the operator of the tugger?

"A Sometimes.

"Q How many times in your experience?

"A I will say there were more times when a man was alone than when he had a signal man.

"Q Did you know that that is the way they did this work at times?

"A That's right.

"Q With just one man?

"A Yes.

camds 209 "De Graff"

"Q Did you ever give any orders that they should use two men or more?

"A No."

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"Q Is it customary to use gloves when you are handling the tugger winch?

"A It's part of your safety rules in handling any wire.

"Q Why is that? Why is it a safety rule?

"MR. TESTA: I object. The rules speak for themselves.

"Q What is the basis for the safety rule to wear gloves?

"MR. TESTA: Objection. Whatever rules there are they will speak for themselves.

"Q Didn't you say it is a safety rule to use a glove in connection with the operation of this tugger?

"A Yes.

"Q My question is, why is it a safety rule?

"MR. TESTA: Why is it necessary to use gloves?

"MR. DANAHAR: Yes.

"Q To protect your hands.

"Q From what?

"A From anything that might happen. There might be grit embedded in the wire.

camds 210 "De Graff"

"Q Fishhooks?

"A Fishhooks. You might have a broken wire.

"Q You might have a kink?

"A Well, gloves are not going to help you too much with a kink. Then you will have to have tools to get that out. There are all kinds of reasons for wearing gloves.

"Q What are fishhooks?

"A Fishhooks are parts of wire that are bent over.

"Q Are they part of normal new wire?

"A No.

"Q Is that something develops in the course of the use of the wire?

"A In the course of the use of the wire, yes.

"Q It is a little piece of wire that breaks off?

"A If it broke off it wouldn't be a fishhook. It's two pieces of wire that break, and running across deck or meeting with some obstruction, then they bend over, forming themselves into a fishhook.

"Q Just as the name describes, it is something like a hook that you can get caught on?

"A That's right.

"Q If your hand happens to touch a wire with a hook on it, it could cut your hand?

"A It could. If you had a glove on --"

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THE COURT: Is that a question?

MR. DANAHAR: "Question: If you had a glove on it could catch your glove?

"A It could.

"Q After this accident happened did you go to the scene?

"A That's right.

"Q Did you go up into the cab?

"A I went to the cab as soon as I was informed. That was the first place I went.

"Q Was Anderson there at the time?

"A Anderson was there."

Page 41.

"Q Was the tugger running at that time?

"A No.

"Q Did you speak to Anderson?

"A I did.

"Q Did you have a conversation with him about the accident?

"A I wouldn't say it was a conversation.

"Q Did you ask him about how the accident had happened?

"A I asked him how it happened. He said that he caught his arm in there. I could tell by his sleeve that he had been -- this wire was around that.

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"Q That the wire was around his arm?

"A The wire had been on. There was grease on his arm [indicating].

"Q You are indicating the upper left arm?

"A Yes.

"Q Is that all he said to you?

"A He caught his arm and it hurt like hell."

Page 42.

"Q Did you say anything to him placing any responsibility for the accident on him?

"A No.

"Q Did you talk to any of the other crew members about the accident, as to how it had happened?

"A No.

"Q Now what you have testified to regarding your conversation with, or your talk with Anderson, is that all you said to him and he said to you?

"A I asked him if he thought it was broken, and he said that it hurt. I started to go towards him and he backed away from me. So the only thing to do was get him ashore.

"Q You had no further conversation about the accident itself?

"A No.

camds 213 "De Graff"

"Q Now, subsequent to that time did you talk to Anderson about the accident itself and how it occurred?

"A I just asked him like that, but all I know is just that he got his arm caught.

"MR. TESTA: All you know is that he said he got his arm caught. You don't know that he got it caught.

"THE WITNESS: Actually I did not see his arm in the drum. I went up there and he was already out by the time I got there.

"Q Did you sent him ashore then?

"A That's the first thing that was on my mind, when a guy gets hurt get him ashore and get somebody to look at him."

Page 45, your Honor.

"Q Did you inquire where each man was up to the time the accident happened?

"A No.

"Q You did not notify anybody in the company about the accident happening?

"A That same afternoon I had my reports and I had accident reports that went to the office.

"Q Now, you used the word 'reports.' Is that right?

"A That's right.

"Q Is it more than one?

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"A As captain of the dredge I had to make a daily report for each day we worked.

"Q How many reports did you make out after the accident?

"A The daily report is based on this logbook, then there was an accident report that I made out.

"Q Is this the accident report, Plaintiff's Exhibit 1 marked for Identification? Dated December -- 12/13/73?

"A Yes."

If your Honor please, I ask Mr. Cohen to produce that accident report, please.

THE COURT: Well, the accident report by the captain, Capt. De Graff, dated 12/13/73?

MR. DANAHAR: 12/13, your Honor.

THE COURT: 12/13/73?

MR. DANAHAR: Yes, your Honor.

THE COURT: Mr. Cohen.

MR. COHEN: Yes, your Honor.

MR. DANAHAR: Well, no, the exhibit is dated December 13, 1973, your Honor, not the accident report.

THE COURT: Yes. What is the date of the accident report?

MR. DANAHAR: I believe it's the date of the accident, your Honor.

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MR. COHEN: This is it, your Honor [handing].

THE COURT: Yes. Is there any objection, Mr. Cohen?

MR. COHEN: If your Honor pleases, I advised you yesterday afternoon of the statute --

THE COURT: Have you an objection?

MR. COHEN: Yes, sir.

THE COURT: All right. Mr. Clerk will you mark that for identification, the captain's report. Just for identification. Plaintiff's Exhibit --

MR. COHEN: If your Honor please, actually I have no objection.

THE COURT: All right, you have no objection to the captain's report just going to be marked for identification going into evidence.

Mr. Clerk, mark it in evidence.

xx [Plaintiff's Exhibit 3 received in Evidence]

THE COURT: May I suggest, do it any way you wish.

MR. DAHAHAR: Would your Honor care to see it first?

THE COURT: No. May I suggest that you finish reading the deposition so that the train of thought of the jury will continue and they can concentrate on it, then you can go back and remind them of the captain's report that was referred to in the course of his deposition, and here

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is what it says.

MR. DANAHAR: Page 51, your Honor.

"Q Could you consider Michael Anderson a good worker and competent?

"A Yes.

"Q A well-trained deck hand?

"A Yes.

"Q Did he work for you as a mate at one time on the Dredge 50?

"A He did.

"Q Do you consider him competent to perform the job of a mate on a dredge?

"A Yes.

"Q Did you consider him well qualified in the operation and maintenance of operating dredges?

"A Within his sphere of mate, yes.

"Q Was there any safety shutoff on this tugger winch?

"A No.

"Q The only control on it was the lever itself?

"A That's right.

"Q Do some winches have safety cutoffs?

"MR. TESTA: Winches of what kind?

"MR. DANAHAR: We are only involved with the winch in this accident.

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"A In this particular operation, no, not to my knowledge."

That completes my reading, your Honor.

THE COURT: Yes, sir. Now will you read the captain's report just marked as an exhibit? What number, Mr. Clerk?

THE CLERK: Plaintiff's Exhibit 3, your Honor.

THE COURT: Very well.

MR. DANAHAR: "Employer's first report of accident or occupational illness. First name, Michael, middle initial, T., last name, Anderson. Employee's address, 997 Rennesselaer Avenue, Staten Island, New York, sex, male, age or date of birth, May 6, '50, Social Security No. --" well, I will -- "Hour began work, 8:00 a.m., hour of accident, 10:30 a.m., did employee stop work immediately, yes, did injury cause loss of time beyond day or shift of accident, answer yes, date and hour pay stopped, 10/18/70, 8:00 p.m., occupation, deck hand, number of years in this occupation, three years, injured while doing such work? Answer yes, years in your employ, three years, number of days usually worked per week, six, hourly rate $4.55, daily rate, $34.80, weekly, $226.20, exact place where accident occurred, in whirley, Dredge No.50, working at Pier 80, North River, name of foreman or supervisor at the time of accident, A. Ramos, mate, earliest

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date foreman or employer knew of accident, immediately, describe in full how the accident occurred, relate the events which resulted in the injury or occupational disease, tell what the injured was doing at the time of the accident, tell what happened and how it happened, name any objects or substances involved and tell how they were involved, give full details on all factors which led or contributed to the accident."

May I state, your Honor, that that is a printed portions of the accident report. Then underneath that it is typed in, give the information called for.

THE COURT: Yes, and what is typed reads as follows.

MR. DANAHAR: Reads as follows: "Injured was engaged in changing holding cable end for end. His left hand was caught in cable and he was pulled onto and over the drum on which the cable was being wound."

The date of this report is 10/13/70. There are some other matters here, but I will not read them, your Honor. It is immaterial.

THE COURT: All right. Now, are you through with the deposition of the captain?

MR. DANAHAR: Yes, your Honor.

THE COURT: Mr. Cohen, would you like to call the attention of the jury and the Judge to anything in

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Capt. De Graff's deposition?

MR. COHEN: I think so, your Honor.

THE COURT: Yes, sir, do so now, please.

MR. COHEN: Your Honor, I shall attempt to avoid reading anything that Mr. Danahar has read, except where I think I have to do it for continuity sake.

THE COURT: Of course.

MR. COHEN: On page 18, the first few questions:

"Q How many men are used in this operation of turning the --

"A The operator, mate and two deck hands.

"Q Where do each one of these individuals peform their respective duties in connection with this operation?

"A Wherever they are told to. The operator would then take charge of the operation. And he would detail the men to the different jobs, and so forth.

"Q You have seen this operation done many times before this incident; is that correct?

"A That's right.

"Q Where had the men been designated to do their work in connection with the operation?

"A There's got to be one man to handle the tugger and one man overseeing the operation, seeing that all your wires and leads are right, and the other two are most

generally clearing the wire so it goes up over the boom wire so there are no kinks."

MR. DANAHAR: If your Honor please, I object to the reading of this part of the deposition. As I understand the rule the only part of the deposition that he is entitled to read are those portions which are fairly connected with portions that I have read. Because this is a deposition of the defendant and he cannot use it affirmatively in that sense. He can read questions that will fairly explain questions that I have read, and I don't believe that this does.

THE COURT: What do you say, Mr. Cohen?

MR. COHEN: If your Honor please, the first few questions I have read, I am still on the first page, the first few questions on that page were read by Mr. Danahar and related to the subject of how many men are supposed to do the job. He then asked further questions of the captain which I am reading as to where those men are dispersed, and I am --

THE COURT: As to where what?

MR. COHEN: He asked how many men were supposed to be doing this job. He read that, then he jumped on to something else. I am now going to read the following few questions and answers where the captain describes what men

are doing what jobs.

THE COURT: All right. What Mr. Cohen proposes to do is not inconsistent with the position that you have just stated, Mr. Danahar. I will allow him to do so.

MR. COHEN: "Question: Where had the men been designated to do their work in connection with the operation?

"A There's got to be one man to handle the tugger and one man overseeing the operation, seeing that all your wires and leads are right, and the other two are most generally clearing the wire so it goes up over the boom wire so there are no kinks.

"Q There is one man handling the tugger wire; is that right?

"A Yes.

"Q How does he handle that?

"A By a lever on the side of it.

"Q The tugger wire is attached to a winch?

"A Yes."

MR. DANAHAR: If your Honor please, I don't want to keep jumping up.

THE COURT: You must do what you understand your duty calls upon you to do. All I don't want is to waste time. But it is never a waste of time when a right is being asserted.

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Now what is it that bothers you now?

MR. DANAHAR: All I want to suggest, your Honor, may I have a standing objection to all of this testimony at this point?

THE COURT: The only thing --

MR. DANAHAR: Instead of jumping up all the time.

THE COURT: Sure. Let me see what you propose to read. I have never seen it before, and the only way to prevent you from reading it, if that is what I have to do, is for me to know what I am dealing with. What do you propose to read? Page what?

MR. COHEN: I have read through page 18, the very bottom of the page. I am now going to read the answer that begins on the top of page 19, and I wanted to continue reading down to line 23 on page 19, your Honor.

THE COURT: Mr. Clerk, will you be good enough to hand that up to me so I may look at it.

THE CLERK: Yes, sir [handing].

THE COURT: So I will know what I am dealing with.

Mr. Danahar, on page 18 did you read the bulk of that page?

MR. DANAHAR: Your Honor, the only part of page 18 I read were the first two questions from the top.

THE COURT: All right. Thank you.

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MR. DANAHAR: The first two questions and answers from the top.

THE COURT: Yes. Well, Mr. Danahar, whether it is that particular page or some other page, you did read that it was the captain's testimony which differs, of course sharply from the testimony of other witnesses, but that is for the jury to decide, but in the deposition you did read that Capt. De Graff somewhere said that only one man was required up in that cab.

Do you remember you read that part to the jury from the deposition?

MR. DANAHAR: I'm not quite sure, your Honor.

THE COURT: Well, you read the deposition, you should know. I thought you did. Because what Mr. Cohen is interested in reading to the jury is an amplification of that part by the captain.

Now let us decide right now whether the captain said there is usually one man there to do that kind of job. I think you read something to that effect.

MR. DANAHAR: May I say what my recollection is?

THE COURT: Surely.

MR. DANAHAR: My recollection is I read something to the effect that at the time of the accident there was one man up there, but I don't recall reading anything that

said that there's only one man required up there.

THE COURT: That is true. You are right. You are right.

MR. COHEN: If your Honor please --

THE COURT: That is my interpretation. At any rate, it is up to the jury.

Let me finish my thought. I have to ask questions in order to know how to rule.

Now, what do you want to say, Mr. Cohen?

MR. COHEN: Your Honor's recollection jives with mine. At a later point in Mr. Danahar's reading he read some questions and answers where he questioned the captain about the --

THE COURT: All right. The objection is overruled. I will allow you to read page 19 to the extent that you have already indicated.

MR. COHEN: Thank you, sir.

MR. DANAHAR: May I have a standing objection? That was my original purpose in --

THE COURT: Well, I am afraid not because it always differs, you see, Mr. Danahar.

MR. COHEN: All right, your Honor.

THE COURT: A standing objection is when you object to something along the very same line of thought.

But here there may be a different item that is being deposed, therefore you will have to object to each one separately.

MR. COHEN: I will just reread the question I was in the middle of, your Honor.

"Q The tugger--"

MR. DANAHAR: Excuse me. Where are you?

MR. COHEN: Bottom of page 18.

"Q The tugger wire is attached to a winch?

"A Yes, that's the tugger itself. The tugger itself is a winch. It's a horizontal winch.

"Q And around the drum of this winch there is a wire?

"A That's right.

"Q That is the wire that is attached to the holding wire when you are changing it or turning it around?

"A That's right.

"Q Now, the man who is assigned to this tugger, he works up in the cab, doesn't he?

"A That's right.

"Q Does he usually work there by himself?

"A Most generally."

MR. DANAHAR: Objection.

MR. COHEN: Your Honor, you said I could read this.

THE COURT: Hold it. Hold it.

MR. DANAHAR: I am voicing an objection to that

question, your Honor.

THE COURT: Yes, but you heard the Court's direction. The Court says that your objection is overruled, and I was going to allow him to read all of page 19 that he told me he wanted to read, and which I passed on.

MR. DANAHAR: I see. Excuse me.

THE COURT: Go back a bit so they can get it.

MR. COHEN: "Question: Now, the man who is assigned to this tugger, he works up in the cab, doesn't he?

"A That's right.

"Q Does he usually work there by himself?

"A Most generally.

"Q He handles the control of the winch?

"A That's right.

"Q Where do the other three men perform their duties?

"A They are outside and they could be anyplace outside.

"Q On the deck?

"A And clearing the wire on deck, on the scow, wherever they are need."

On page 20, your Honor.

"Q In connection with the turning around of this holding wire, or closing wire, whichever it might be, is it necessary to give signals to the man who is operating

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the tugger wire?"

MR. DANAHAR: Objection, your Honor. That is a new subject, I believe, and I have to press my objection.

MR. COHEN: He read parts of the deposition relating to the giving of signals.

THE COURT: Let me see it. What do you want to read on that page?

MR. COHEN: The one question and answer beginning on line 11 on page 20, your Honor.

THE COURT: All right.

MR. DANAHAR: Your Honor, I will withdraw my objection.

THE COURT: Withdrawn.

MR. COHEN: "Question: In connection with the turning around of this holding wire, or closing wire, whichever it might be, is it necessary to give signals to the man who is operating the tugger wire?

"A Most generally you holler, give signals that way."

THE COURT: Mr. Danahar, did I hear you say"read the next"?

MR. DANAHAR: That's what I asked him, your Honor.

THE COURT: All right. If that is so, then we have got to have it now not later on.

MR. DANAHAR: I would ask him to read the next

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question then.

THE COURT: How about it? Do you want to read it?

MR. COHEN: No, your Honor.

THE COURT: Let me have it. What line is it?

MR. DANAHAR: Line 17 is the question I want read.

THE COURT: Your objection is sustained. Read it, Mr. Cohen.

MR. COHEN: "Question: Is there any other way of giving signals?

"A No, there wasn't at that time.

"Q Is there a method now of giving signals?

"A I wouldn't even know. I don't know."

On page 22, starting at line 9.

"Q I understood you to say before that the tugger operator was up in the cab that was controlling the tugger winch?

"A Right.

"Q And that the other three men were working down on the deck?

"A No, I said they were working where the wire was. They could be on the scow or on the deck.

"Q Let's assume that the men other than the tugger operator were either on the scow or on the deck or both. Could the tugger operator see those men when he was at the

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controls of the tugger?"

MR. DANAHAR: Objection, your Honor.

THE COURT: On what ground?

MR. DANAHAR: That there is nothing that I read that bears on that question.

THE COURT: I will allow it. I will allow it. What is the answer?

MR. COHEN: "Answer: He could not see all of the men, he could see the one man that was supposed to be directing operations.

"Q Where would that man be that he could see?"

MR. DANAHAR: Objection.

THE COURT: Wait a minute.

MR. DANAHAR: Same objection, your Honor.

THE COURT: Same ruling. Go ahead, Mr. Cohen.

MR. COHEN: "Answer: Probably standing on the scow. To clarify this, a scow alongside of the dredge on a Sunday is most generally either a partially loaded scow or a light scow. A partially loaded scow or a light scow could be anywheres from six to seven feet and on some of the larger scows even higher than that, above the deck of the dredge.

"Q What you are saying then is that the only person he could see would be somebody who was on the scow; is

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that right?"

MR. DANAHAR: Objection, your Honor.

THE COURT: Objection overruled.

MR. COHEN: "Answer: That's right.

"Q That would depend upon the height of the scow at the time?

"A That's right."

Now the next, I'm going to pickup on page 26, your Honor, line 6, which is something Mr. Danahar read but I am reading it for continuity sake.

THE COURT: Just go ahead and read it. He will jump up if he wants to object.

MR. COHEN: "Question: Did you ever on any occasion --" Wait a minute. Judge, please bear with me a moment.

THE COURT: Yes, sir.

MR. COHEN: On page 27, your Honor, line 4.

"Q I am talking about on what occasion when you were turning cables from end to end would you have three men up there in connection with the tugger operation?"

MR. DANAHAR: Objection, your Honor.

THE COURT: Let me see that, please. How much of it do you intend to read?

MR. COHEN: Page 27 from line 4 through line 19,

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your Honor.

THE COURT: What is the basis of the objection?

MR. DANAHAR: It has nothing to do with what I read, your Honor.

THE COURT: What do you say to that, Mr. Cohen?

MR. COHEN: He read the questions on the prior page in which he asked the captain about occasions when there might be more than one man up in the tugger cab, and this amplifies that subject, your Honor.

THE COURT: What do you say, Mr. Danahar, to that?

MR. DANAHAR: My question on the opposite page, your Honor, was, did you ever on any occasion prior to this accident see more than one man assigned to the operation of that tugger wire when this type of work was being done. There is nothing in there about being assigned to the cab.

THE COURT: The objection is overruled. I will allow it to be read.

Read it.

MR. COHEN: "Question: I am talking about on what occasion when you were turning cables from end to end would you have three men up there in connection with the tugger operation?

"A Men might be cleaning threads on the bolts that were up there. As you are working on this stuff you are

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working with nuts and bolts and wrenches, and you may have some men cleaning equipment. You may have some men cleaning threads on the bolts.

"Q On what bolts?

"A Bolts that fasten your main wire onto the drum after you brought your wire back in.

"Q This would not have anything to do with the --"

MR. DANAHAR: "They" would not.

MR. COHEN: I am sorry.

"Q They would not have anything to do with the operation of the tugger winch?

"A No.

"Q They would be up there for other reasons?

"A That's right."

On page 33, your Honor, line 15.

"Q Did you ever give orders prior to October 13, 1970 in connection with work of this kind that was going on at the time of the accident that a man should standby at that door at the forward port end in order to either give or accept signals from the tugger?

"A No.

"Q Did you ever have occasion to observe a man operating the tugger before this accident?

"A Yes.

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"Q In this type of an operation?

"A Yes.

"Q How did he operate the tugger?

"A --"

MR. DANAHAR: Objection, your Honor.

THE COURT: What is the basis for the objection, Mr. Danahar?

MR. DANAHAR: It's not anything that I read and there was no testimony in anything that I read about how the tugger was operated.

THE COURT: Well, let me see it. What lines do you propose to read, Mr. Cohen?

MR. COHEN: Starting at the very top of page 34, your Honor, through the first question on the following page. Well, the first answer on the following page, rather.

THE COURT: What is the basis of your claim that this should be read, Mr. Cohen?

MR. COHEN: Mr. Danahar has been reading testimony from this deposition regarding the function of the man at the tugger and how many men had to be there, and this amplifies it, your Honor.

THE COURT: The objection is overruled. I will let you read it.

MR. COHEN: "Question: How did he operate the

tugger?

"A I don't quite understand that. There's only one way to operate the tugger. There's a lever ahead and you work it ahead and stop it and reverse it.

"Q Where did he stand when he was doing this?

"A As I said, on the starboard side of the wire itself."

May I interrupt my reading at this time to ask Mr. Danahar to stipulate that aboard ship starboard side means right?

MR. DANAHAR: I so stipulate, your Honor.

MR. COHEN: Thank you.

"Q What if anything did he do with the wire as it was going around the drum of the winch, as the tugger wire is going around the winch part of the tugger that wire has to be guided around the drum, doesn't it?

"A Sometimes.

"Q How was that done?"

MR. DANAHAR: Objection, your Honor.

MR. COHEN: Your Honor, I --

THE COURT: I will allow you to read it.

MR. COHEN: "Question: How was that done?

"A Stop it, back it off, set it straight and then go ahead again.

"Q Is that the only method of doing it?"

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MR. DANAHAR: Objection, your Honor.

THE COURT: Objection overruled.

MR. COHEN: "Question: Is that the only method of doing it?

"A It's the proper method of doing it. I have seen people hit it, in other words, hit it with their hand while it's going up. But that's the one thing that I would tell someone about."

MR. DANAHAR: I move to strike out that part of the answer that is not responsive.

THE COURT: Yes, that is stricken. That is stricken. The jury will disregard the latter part of what was just read by Mr. Cohen. It is not a part of the trial record before you. Just erase it from your minds.

All right.

MR. COHEN: May I just say something on that, your Honor?

THE COURT: No, sir.

MR. COHEN: "Question: You have seen some crew members doing that?"

MR. DANAHAR: Same objection, your Honor.

THE COURT: Objection sustained.

MR. COHEN: That is the question on line 23 at page 34, your Honor.

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THE COURT: Yes, sir.

MR. COHEN: Next, "Question: What did you tell them?"

MR. DANAHAR: Same objection, your Honor.

THE COURT: Same ruling.

MR. COHEN: That is the question on line 25 of that page.

THE COURT: Yes, sir.

MR. COHEN: On page 36, line 8, your Honor.

"Q On the day of this accident did you know that Mike Anderson was the only one in the cab handling the tugger winch?

"A I did not know it.

"Q If you had known it would you have given instructions to have somebody else go up there?"

MR. DANAHAR: Objection, your Honor.

THE COURT: On what basis?

MR. DANAHAR: Same basis.

THE COURT: The objection is overruled.

MR. COHEN: "Question: If you had known it would you have given instructions to have somebody else up there?

"A No."

On page 37, your Honor, the question on line 8.

"Q If it became necessary to operate, how would

that be accomplished?

"A Holler.

"Q From outside to the man up in the cab operating the tugger?

"A That's right.

"Q Is there any noise going on up in the cab when this changing of the wire is taking place?

"A The tugger is working.

"Q Aside from the tugger.

"A Sometimes generators are going.

"Q Do these generators make noise?

"A Certainly.

"Q A loud noise?

"MR. TESTA: Are you asking at the time of the accident with these generators going, or just generally?

"MR. DANAHAR: At the time of the accident.

"A Noise is a comparative thing. You get used to it. Out on a rig like that you can get used to it, you can holler over it. And of course if it's not too loud you gauge your voice to it."

Page 43.

"Q Did you send him ashore then?

"A That's the first thing that was on my mind. When the guy gets hurt get him ashore and get somebody to look

at him.

"Q What did you do after he left the vessel?"

MR. DANAHAR: Objection, your Honor.

THE COURT: I should think that would be objectionable, but let me look at it so I can see. What lines do you propose reading?

MR. COHEN: On page 43, your Honor, from line 9 through to page 44, line 8.

THE COURT: Yes, sir, let me have it, please, Mr. Clerk.

Objection sustained.

MR. COHEN: On page 44, your Honor, line 21.

"Q After the accident happened did you make an investigation?

"A I asked people, and he was by himself and no one knew any more about it than I did about it.

"Q When you say you asked people, do you mean you asked the other crew members what had happened?

"A That's right.

"Q What response did you get?"

MR. DANAHAR: Objection, your Honor.

THE COURT: Objection sustained, I should think, but let me take a look at it. At what line?

MR. COHEN: I will pass over that question,

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your Honor.

THE COURT: All right, you withdraw it. Go ahead.

MR. COHEN: The following question, line 8.

"Q Did you get any statements from any of these crew members?"

MR. DANAHAR: Objection, your Honor.

THE COURT: Sustained.

MR. COHEN: "Question: You talked to them about what they knew about the accident?"

MR. DANAHAR: Objection.

MR. COHEN: May I be heard on that one, your Honor?

THE COURT: Yes.

MR. COHEN: Mr. Danahar last put in evidence the accident report made out by the captain and has read it to the jury, and I think as a background to that it is proper that they know the sources of the captain's information for making out that report. That is what I am getting at here, your Honor.

THE COURT: What do you say to that, Mr. Danahar?

MR. DANAHAR: I don't see why that is necessary.

THE COURT: Is there anything to show that --

MR. DANAHAR: That they should know the sources of how he got it --

THE COURT: I am sorry, Mr. Danahar. I should

not have interrupted you. Will you please forgive me and start again? What did you say?

MR. DANAHAR: I say, I don't see how it is material that jury should know from what sources the captain got his information.

THE COURT: Let me see exactly what it is that you want to read, Mr. Cohen.

MR. COHEN: Yes, sir. It is on page 45, from line 8 to line 13. Two questions.

THE COURT: Yes, sir. I will reserve decision on this. I want to think it through a bit.

What else do you want from this deposition?

MR. COHEN: I think I just have a few more, your Honor.

THE COURT: All right.

MR. COHEN: On page 50, line 20.

"Q Was the tugger wire used at anytime after the accident, if you can remember?"

MR. DANAHAR: Objection, your Honor.

MR. COHEN: May I be heard, your Honor?

THE COURT: Yes, sir.

MR. COHEN: Mr. Danahar read parts of this deposition regarding replacement and repair of tugger wires and when that was done, if at all. This goes into that

same subject about the use of this particular tugger wire.

MR. DANAHAR: Your Honor, I do not remember reading any such testimony.

THE COURT: Neither do I, but I may be mistaken. Both of you check it out during the recess, and if you find that one is right and the other one is wrong on his memory, why, take it up with me again and we will withdraw it.

The next portion of that deposition, Mr. Cohen.

MR. COHEN: Page 61. This is now the question put by Mr. Testa following Mr. Danahar's completion of his questioning.

MR. DANAHAR: If your Honor please, I object to the reading of this question.

THE COURT: Be good enough to rise.

MR. DANAHAR: I am sorry, your Honor. I object to the reading of this question because by reading this question he is going to --

THE COURT: Let me halt you. Let me see it. You are likely to say something that --

MR. COHEN: I would propose to read from page 61, starting at line 18, your Honor, through to page 62 line 9, sir.

THE COURT: Yes, sir. All right now, Mr. Danahar, what is your position on this?

MR. DANAHAR: My position is that the matter that you told Mr. Cohen and I to take up during the recess involves this very question that he is going to ask.

THE COURT: Very well. I will reserve decision. Take it up among yourselves during the recess, and let's see how far it gets. If it has to come back to me it will come back to me.

Are you through now with the deposition?

MR. COHEN: That would be the end of the deposition.

THE COURT: All right. Now you gentlemen know what it is in that deposition that still remains unfinished. Let's not amplify it, let's not diminish it, but let's deal with it during the recess.

Will you please be good enough Mr. Clerk to announce a recess.

[Recess]

[In the robing room]

THE COURT: There has been an off the record discussion with regard to the objection to Mr. Cohen reading on page 45 of the De Graff deposition, which objection is now withdrawn so that Mr. Cohen without objection will read only as follows: Line 8, page 45, "Question: Did you get any statements from any of these crew members?

"A No.

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"Q You talked to them about what they knew about the accident?

"A It was guesswork on their part and my part."

That is all on that page that Mr. Cohen will be allowed to read. Now, what is next?

Off the record.

[Discussion off the record]

THE COURT: On the record.

Mr. Cohen, you now say that the only remaining portion of this De Graff deposition that you want to read appears on page 61 beginning with line 18 and ends --

MR. COHEN: On page 62 line 9.

THE COURT: And, Mr. Danahar, you would like to have your objection recorded.

MR. DANAHAR: Yes, your Honor.

THE COURT: Yes. The objection is overruled. You will be allowed to read it, Mr. Cohen.

Does that close it now?

MR. COHEN: That does, your Honor.

THE COURT: Very well. Now, gentlemen, will you keep your seats? I have been giving thought to much that has occurred in this case. There was a great deal of discussion off the record, and by reason of the fact that subsequent events related to what took place on the record

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and off the record, I think it would be to the interest of a complete trial record that the Court record what may not have appeared on the record up to now, although I must say parenthetically that I am quite confident that most of it at one time or another got into the record.

That deals with the failure of counsel on both sides to have come fully prepared for the trial of this case. There was much evidence to show that they resorted to a last minute approach on many of the points that should have been resolved long in advance.

For instance, the examination, the physical examination of the plaintiff in order to find out the extent of the subsequent injury to the wrist. There is no reason why that wasn't arranged for long in advance of the trial.

What has actually taken place is that pressure has been placed to effectuate such a physical examination, medical examination, during the time of the trial itself.

True, it is now pointed out that the examination can take place, may be arranged over the weekend, including tomorrow, possibly even on Washington's Birtherday, on Monday, but the point is that these are unnecessary matters to have been put off until the last minute and additional pressure not only to the lawyer on the other side, but to the Court.

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The failure of counsel to have sat down and clearly delineated the extent of the work lost, time lost, the amount of money, the wages, all the details with regard to lost wages in the past, and lost wages in the future. All of that sort of thing has not even to this very moment been placed before the Court in such a fashion as to relieve us of the strong possibility that we may have to spend a considerable period of time on items that are really simple bookkeeping entries that require counsel to work on in order to come to the sum total of their significance.

In particular I want the record to show that in this very robing room before the deposition of the plaintiff was read I implored counsel, and then I changed it and said something about, I am no longer going to request, I am going to direct that you get together this evening and iron out among yourselves what portions you agree on should be read to the jury and what you cannot agree on I shall have to resolve.

Counsel did not, as the record will reflect, carry out the Court's direction, and we were confronted with the unhappy recital in open court that Mr. Danahar had arrived here at 9:30, certainly, by the way, he should have been here at 8:00 o'clock, not 9:30; knowing that the jury was due at 10:00, he couldn't possibly have effected a proper

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disposition in a half hour, and then Mr. Cohen having to admit and apologize for his arrival here ten minutes later, to wit, at 9:40.

The total result was that we, the Court and the jury, were subjected to a long-winded reading of a deposition, a good deal of which could have been avoided.

Mr. Cohen will undoubtedly argue that he wanted to show from the whole deposition that the witness, Anderson, was not subjected to any other -- never took a position contrary to what Mr. Cohen finds fault with. Well, if that is Mr. Cohen's objective he could have clearly gotten that stipulation, and if not the Court would have read it and made a ruling.

There are a great number of pages of the plaintiff's deposition that hadn't anything at all to do with the major points with which Mr. Cohen and Mr. Danahar were concerned at the time of our discussion as to what was to go in from that deposition to the jury.

Another point, both sides were way off, despite the clear-cut request by the Court's Law Clerk to counsel that they estimate as closely as possible the time that would be required. So the result is that because of what has taken place here we have gone way beyond the time that was definitely indicated to the Court. The result is that

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I have had to change the dates of trials of people in criminal cases.

These are some of the instances of failure to save court time, and the result has been to heap upon the Court a burden that is unnecessary. The burdens that the Judge has to keep a trial running are severe enough, and to have pushed upon me these unwarranted and unnecessary items that could have been resolved long in advance of trial is somewhat unfair and inconsiderate of the Court.

Now, I think it only fair and proper that I should afford counsel on both sides an opportunity to say anything they wish with regard to what the Court has just said.

Is there anything you want to say, Mr. Danahar?

MR. DANAHAR: Yes, there is, your Honor.

THE COURT: Go ahead.

MR. DANAHAR: In connection with your direction to try to get together with Mr. Cohen on the reading of the plaintiff's deposition, that very night I suggested to Mr. Cohen that we sit down in the courtroom here and accomplish what your Honor had directed, and I was informed by Mr. Cohen that he would have to read over the deposition first. So it could not be done that night. And it was then agreed that we would meet at 9:30 the next morning. Although I wanted to do it that night.

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I arrived here at twenty-five minutes to 10:00, your Honor. I was in the courthouse here, though, at approximately quarter after 9:00. I had to pickup records from the -- medical records from the office on the fifth floor because the Clerk told me that's the only way I could get them. I had to get them. So I got them. And I was delayed in coming up in the elevator, so I didn't get here until twenty-five minutes to ten.

Then when Mr. Cohen showed up he advised me that he had decided that he wanted to read the whole deposition so there was no use of discussing it.

THE COURT: Is there anything you wish to say, Mr. Cohen?

MR. COHEN: Yes. If I may address myself to what Mr. Danahar just said, your Honor. I understood your Honor's directive to be that we should agree on what parts we would find objectionable. I felt in order to properly do that it was incumbent upon me to read that entire deposition through again from cover to cover, and I so advised Mr. Danahar, and I state for the record that I spent that evening at home reading the deposition through in its entirety from cover to cover.

When I finished my reading of that deposition, and I am referring to the plaintiff's deposition, I decided

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that there was not a single question or answer in that deposition that I had any objection to, and that in fact in view of the nature of the testimony given by the plaintiff I indeed wanted to read every single question and answer to this jury.

I so advised Mr. Danahar of that fact the following morning when I came to court. It then turned out that Mr. Danahar had not read that deposition through and pursuant to an express directive given by your Honor, as your Honor will recall, and probably it appears on the record, Mr. Danahar, and I was chagrined to hear this, said he hadn't read it through himself, and he ahd to do it during the luncheon recess pursuant to your Honor's directive to see if he had any objections.

I spent that evening on the deposition, and I have spent every evening on this case. I have been up early in the morning, and I meet at my office with witnesses and I have other cases and matters to handle and I'm in the office not too much after 8:00 o'clock, your Honor, and I work until late at night both in the office and at home, and I have done my best, and maybe it hasn't been to your Honor's satisfaction, but I have done my best to be ready for this case.

THE COURT: Is there anything else, Mr. Cohen?

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MR. COHEN: I don't think so, your Honor.

THE COURT: It seems to me to be obvious that regardless of what responsibilities a lawyer has, when the time comes for him to enter into the operation of the client, especially at trial, he has to be fully prepared for that trial. We cannot allow any other approach to the problem.

Oh, yes, it's different if a lawyer has been ill or he has labored under some infirmity. Then the Court should be considerate, allow an adjournment, and so forth, in order to enable the lawyer to be truly ready. It is evident, and I want the record to show, that both counsel have given eloquent support to the Court's position. There is no reason in the world why both attorneys with regard to the most important deposition in the trial, to wit, the deposition of the plaintiff, shouldn't have almost memorized every bit of testimony.

There was no reason why Mr. Cohen should have taken, had to take the whole evening to read that desposition, and even if he had because he hadn't done his homework he should have made other arrangements to fulfill the Court's direction. Even if it meant reporting to the Court, even if it meant coming in here at 8:00 o'clock, he has not excused his failure to come here before 9:40.

You don't wipe it out by just saying, I'm sorry,

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I'm late. There was a job to be done. And as to Mr. Danahar with regard to that same deposition, it is equally true that Mr. Danahar did not have that familiarity with his own client's deposition that he should have had. There is no reason why he should have said on the record -- and it must have given him pain to have said that in the presence of the jury -- that he wanted an opportunity to read the deposition before he could enter objections to Mr. Cohen's offer of the entire deposition into evidence.

That kind of work does not meet with the Court's approval. It does not come within the orbit of thorough preparation for trial.

Very well, gentlemen, let us resume with the trial. Now, before you go, have you carried out the Court's direction with regard to conferring as to the lost wages and items of that nature? Did you get together? Yes or no?

MR. DANAHAR: Yes, sir.

MR. COHEN: Yes, we did.

THE COURT: And have you got pages of stuff on that and a stipulation on that?

MR. COHEN: Yes, sir. We have the facts and figures. We can put in a stipulation.

THE COURT: I thank you. If it is as complete as I asked you, I would be very grateful to you.

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Aug. 13, 1974
John J. Corcoran